THE GREAT SEAL OF THE STATE OF MISSISSIPPI
IN GOD WE TRUST

MISSISSIPPI CODE 1972
Annotated

Regulation of Trade, Commerce
and Investments

Title 75

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME SIXTEEN C

REGULATION OF TRADE, COMMERCE AND INVESTMENTS

§§ 75-12-1 to 75-95-11

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2016 REGULAR AND
1ST AND 2ND EXTRAORDINARY LEGISLATIVE SESSIONS

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PUBLISHER'S FOREWORD

This 2016 Volume 16C of the Mississippi Code of 1972 Annotated, added this year, represents material appearing in the original 1973 bound volume and the 1981 and 2002 Replacement Volume 16A (Title 75, Chapter 12), the 1991 and 2000 Replacement Volume 17 (Title 75, Chapters 13 through 89) and the 2009 Replacement Volume 16B (Title 75, Chapters 13 through 91), as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2016 Regular and 1st and 2nd Extraordinary Legislative Sessions.

This volume contains the text of Chapters 12 through 95 of Title 75 of the Mississippi Code of 1972 Annotated, as amended through the 2016 Regular and 1st and 2nd Extraordinary Legislative Sessions.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

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For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water Street, Charlottesville, VA 22906-5389.

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User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Analyses
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— Code Status
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— Organization and Numbering System
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If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the

Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
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CHAPTER 12

Uniform Electronic Transactions Act

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§ 75-12-1. Short title.

This chapter may be cited as the Uniform Electronic Transactions Act.

SOURCES: Laws, 2001, ch. 400, § 1, eff from and after July 1, 2001.

ATTORNEY GENERAL OPINIONS

A voice record created or adopted by a person may constitute an "electronic signature" pursuant to the Uniform Electronic Transactions Act. Bearman, Apr. 19, 2002, A.G. Op. #02-0161.

§ 75-12-3. Definitions.

In this chapter:

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(10) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(11) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture,

governmental agency, public corporation, or any other legal or commercial entity.

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(16) "Transaction" means an action or set of actions occurring between two (2) or more persons relating to the conduct of business, commercial, or governmental affairs.

SOURCES: Laws, 2001, ch. 400, § 2, eff from and after July 1, 2001.

§ 75-12-5. Scope.

(a) Except as otherwise provided in subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) The Uniform Commercial Code other than Sections 75-1-107 and 75-1-206, Article 2 [(Section 75-2-101 et. seq. (sales))], and Article 2A [(Section 75-2A-101 et. seq. (leases))]; and

(3) Title 75, Chapter 1 General Provisions, other than Section 75-1-107 Waiver or Renunciation of Claim and Section 75-1-206 Statute of Frauds on Miscellaneous Personal Property.

(4) A statute, regulation or other rule of law governing adoption, divorce or other matters of family law. The provisions of this chapter shall not apply to court orders or notices, or official court documents (including briefs, pleadings and other writings) required to be executed in connection with court proceedings; any document required to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials; or any notice of (a) the cancellation or termination of utility services (including water, heat and power); (b) default, acceleration, repossession, foreclosure or eviction, or right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual; (c) the cancellation or termination of health insurance or benefits or life

insurance benefits (excluding annuities); or (d) recall of a product, or material failure of a product, that risks endangering health or safety.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection (b) to the extent it is governed by a law other than those specified in subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

SOURCES: Laws, 2001, ch. 400, § 3, eff from and after July 1, 2001.

Cross References — Uniform Commercial Code, see § 75-1-101 et seq.

Waiver or renunciation of claim or right after breach, see § 75-1-107.

Statute of frauds for kinds of personal property not otherwise covered, see § 75-1-206.

§ 75-12-7. Prospective Application.

This chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after July 1, 2001.

SOURCES: Laws, 2001, ch. 400, § 4, eff from and after July 1, 2001.

§ 75-12-9. Use of electronic records and electronic signatures; variation by agreement.

(a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

SOURCES: Laws, 2001, ch. 400, § 5, eff from and after July 1, 2001.

§ 75-12-11. Construction and application.

This chapter must be construed and applied:

(1) To facilitate electronic transactions consistent with other applicable law;

(2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) To effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SOURCES: Laws, 2001, ch. 400, § 6, eff from and after July 1, 2001.

§ 75-12-13. Legal recognition of electronic records, electronic signatures and electronic contracts.

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

SOURCES: Laws, 2001, ch. 400, § 7, eff from and after July 1, 2001.

§ 75-12-15. Provision of information in writing; presentation of records.

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this chapter requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated, or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) The record must be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in subsection (d)(2), the record must be sent, communicated, or transmitted by the method specified in the other law.

(3) The record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) To the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) A requirement under a law other than this chapter to send, communicate, or transmit a record by first class mail, postage prepaid or regular United States mail, may be varied by agreement to the extent permitted by the other law.

SOURCES: Laws, 2001, ch. 400, § 8, eff from and after July 1, 2001.

§ 75-12-17. Attribution and effect of electronic record and electronic signature.

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

SOURCES: Laws, 2001, ch. 400, § 9, eff from and after July 1, 2001.

§ 75-12-19. Effect of change or error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither paragraph (1) nor paragraph (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) may not be varied by agreement.

SOURCES: Laws, 2001, ch. 400, § 10, eff from and after July 1, 2001.

§ 75-12-21. Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

SOURCES: Laws, 2001, ch. 400, § 11, eff from and after July 1, 2001.

§ 75-12-23. Retention of electronic records; originals.

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) Accurately reflects the information set forth in the record at the time it was first generated in its final form as an electronic record or otherwise; and

(2) Remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a).

(f) A record retained as an electronic record in accordance with subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after July 1, 2001, specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this State from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

SOURCES: Laws, 2001, ch. 400, § 12, eff from and after July 1, 2001.

§ 75-12-25. Admissibility in evidence.

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

SOURCES: Laws, 2001, ch. 400, § 13, eff from and after July 1, 2001.

§ 75-12-27. Automated transaction.

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to it.

SOURCES: Laws, 2001, ch. 400, § 14, eff from and after July 1, 2001.

§ 75-12-29. Time and place of sending and receipt.

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) Is in a form capable of being processed by that system; and

(3) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) It is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subsection (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subsection (a), or purportedly received under subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

SOURCES: Laws, 2001, ch. 400, § 15, eff from and after July 1, 2001.

§ 75-12-31. Transferable records.

(a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under Article 3 of the Uniform Commercial Code (Section 75-3-101 et. seq.) or a document under Article 7 of the Uniform Commercial Code (Section 75-7-101 et. seq.) if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5) and (6), unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 75-1-201(b)(21), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under Section 75-3-302(a), 75-7-501 or 75-9-308 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

SOURCES: Laws, 2001, ch. 400, § 16, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (a)(1) by inserting the word "under" between the phrases "or a document" and "Article 7," and updated a statutory reference in subsection (d) by substituting "Section 75-1-201(b)(21)" for "Section 75-1-201(20)." The Joint Committee ratified the corrections at its August 5, 2016, meeting.

Cross References — Negotiable instruments under the Uniform Commercial Code, see § 75-3-101 et seq.

Documents of title under the Uniform Commercial Code, see § 75-7-101 et seq.

§ 75-12-33. Creation and retention of electronic records and conversion of written records by governmental agencies.

The executive authority of each governmental agency of this state shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records subject to applicable policies and standards of the Mississippi Department of Information Technology Services and the Mississippi Department of Archives and History as may be adopted pursuant to law.

SOURCES: Laws, 2001, ch. 400, § 17, eff from and after July 1, 2001.

Cross References — Mississippi Department of Information Technology Services, see § 25-53-1 et seq.

Mississippi Department of Archives and History, see § 39-5-1 et seq.

§ 75-12-35. Acceptance and distribution of electronic records by governmental agencies.

(a) Except as otherwise provided in Section 75-12-23(f), the executive authority of each governmental agency of this State shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(b) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a), the executive authority of the governmental agency, giving due consideration to security, may specify:

(1) The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(4) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in Section 75-12-23(f), this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

SOURCES: Laws, 2001, ch. 400, § 18, eff from and after July 1, 2001.

§ 75-12-37. Interoperability.

The governmental agency of this state which adopts standards pursuant to Section 75-12-35 may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

SOURCES: Laws, 2001, ch. 400, § 19, eff from and after July 1, 2001.

§ 75-12-39. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SOURCES: Laws, 2001, ch. 400, § 20, eff from and after July 1, 2001.

CHAPTER 13

Bills, Notes and Other Writings

Sec.
75-13-1. Assignment.
75-13-3. Suits on indorsed bills and notes.
75-13-5. Discontinuance.
75-13-7. Duties of the clerks and sheriffs with executions.
75-13-9. Remedy of party paying execution.
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§ 75-13-1. Assignment.

Any note, or other writing which may be assigned under any of the provisions of Chapter 3 of the Uniform Commercial Code shall, when so assigned in the manner therein provided, carry with the assignment for the benefit of the assignee all liens and other securities securing the same, and the holder may fully enforce the said benefit in any proper proceeding in law or in equity. A claim for the purchase money of land, or any other claim, secured by a legal or equitable lien in or on realty, may be assigned in writing and thereupon have the full benefit of this section. Provided, however, as to all promissory notes, and other writings for the payment of money or other thing, except such notes or writings that are payable to order or bearer, when assigned, the assignee or indorsee of such promissory notes or other writings not payable to order or bearer, may maintain such action thereon, in his own name, as the assignor or indorser could have maintained. In all actions on such assigned promissory notes not payable to order or bearer, bill of exchange or other writing, for the payment of money or other thing not payable to order or bearer, the defendant shall be allowed the benefit of all want of lawful consideration, failure of consideration, payments, discounts and setoffs made, had or possessed against the same, previous to notice of assignment in the same manner as though the suit had been brought by the payee. The assignee or indorsee of any such instrument not payable to order or bearer may maintain an action against the person, or persons, who may have indorsed the same as in case of inland bills of exchange.

SOURCES: Codes, Hutchinson's 1848, ch. 47, art. 2 (9); 1857, ch. 43, art. 2; 1871, § 2228; 1880, § 1124; 1892, § 3503; 1906, § 4001; Hemingway's 1917, § 2564; 1930, § 2853; 1942, § 238.

Cross References — Right of action of assignee of choses in action, see §§ 11-7-3 through 11-7-7.

Negotiation, transfer and indorsement of negotiable instruments, see § 75-3-201 et seq.

Assignment to surety paying judgment, see § 87-5-9.

Assignment of indebtedness, see §§ 89-5-15, 89-5-17.

Rights of assignees of lessor, see §§ 89-7-15, 89-7-21.

JUDICIAL DECISIONS

1. In general.
2. Application to particular instruments or obligations.
3. —Instruments payable to bearer.
4. —Instruments payable out of state, or executed out of state and payable within state.
5. —Judgments.
6. Defenses; estoppel.
7. Setoffs.

1. In general.

When a chose, capable of legal assignment, is assigned absolutely to one, but the assignment is made for the purpose of collection, the legal title thereto vests in the assignee, and it is no concern of the debtor. Taylor v. C.I.T. Corp., 187 Miss. 581, 191 So. 60 (1939).

This section is not applicable to suits in equity to enforce the right of subrogation. Box v. Early, 181 Miss. 19, 178 So. 793 (1938).

The holder of a bill of exchange payable to bearer and by him indorsed in blank was prima facie a bona fide holder for value. Gillespie v. Planters' Oil-Mill & Mfg. Co., 76 Miss. 406, 24 So. 900 (1899).

Notwithstanding the section, a buyer of property from one who fraudulently purchased it might be a bona fide purchaser, although he might not have fully paid the purchase price which he promised therefor. Pollock v. Simmons, 76 Miss. 198, 23 So. 626 (1898).

If the writing assigned was "negotiable paper," as defined by the law merchant, the indorsee incurred the responsibilities incident to that form of contract; but as to other choses in action assigned, the mere transfer had no other effect than to pass legal title. Lamkin v. Nye, 43 Miss. 241 (1870).

2. Application to particular instruments or obligations.

The right to funds represented by a certificate of deposit which was assigned as security for repayment on a note would be determined by § 75-13-1. Bank of Crystal Springs v. First Nat'l Bank, 427 So. 2d 968 (Miss. 1983).

Assignee of deed of trust given to secure pre-existing indebtedness represented by note assigned to purchaser after default in payment of indebtedness receives note and deed of trust subject to same equities that could have been imposed against assignor. Buckwalter v. McElroy, 205 Miss. 54, 38 So. 2d 317 (1949).

A document given by a finance company to an automobile dealer, acknowledging receipt of certain conditional sale contracts, reciting that they were being accepted for collection and that the net amount realized would be credited to the dealer when and if collected, was an assignment for collection, coupled with an interest, and entitled the finance company to possession in an action of replevin to an automobile covered by one of such assigned contracts. Taylor v. C.I.T. Corp., 187 Miss. 581, 191 So. 60 (1939).

This section is not applicable to suits in equity to enforce right of subrogation. Box v. Early, 181 Miss. 19, 178 So. 793 (1938).

Where vendor deposited purchase money note with bank as collateral security for debt, bank agreed to credit vendor with balance due on note, with understanding that new note should be executed by vendee and wife on which vendor should become indorser, and vendee and wife signed new note but only vendee and not wife signed trust deed, bank was entitled to enforce right of an assignee including lien securing note, as against contention that vendor's purchase money lien had to be in writing to enable transferee to enforce lien. Box v. Early, 181 Miss. 19, 178 So. 793 (1938).

Unauthorized alteration of promissory note by stranger did not invalidate it. Coulson v. Stevens, 122 Miss. 797, 85 So. 83 (1920).

Unauthorized alteration of promissory note might be ratified by owner, or his duly authorized agent. Coulson v. Stevens, 122 Miss. 797, 85 So. 83 (1920).

Trade checks, expressly not transferrable, did not violate this section. Moody v. Finkbine Lumber Co., 122 Miss. 407, 84 So. 385 (1920).

Consignee could not subject funds in the hands of a resident bank for damages sustained by the failure of the consignor to deliver other goods although they might be included in the one contract of sale. Exchange Nat'l Bank v. Russell, 81 Miss. 169, 32 So. 314 (1902).

Where a nonresident national bank bought a consignor's draft with bill of lading attached, an attachment in chancery by the consignee to subject the proceeds of the draft in the hands of a resident state bank was not an attachment against the national bank, and the proceeding was not within U. S. Rev. Stat. § 5242, 12 USCS § 91, 4 FCA title 12, § 91, providing that no attachment shall issue against any national bank or its property before final judgment in any suit. Exchange Nat'l Bank v. Russell, 81 Miss. 169, 32 So. 314 (1902).

A bank which had bought a consignor's draft for the price of grain, and taken an assignment of the bill of lading therefor, occupied as to the consignee the situation of the consignor, and on paying the draft and receiving the bill of lading and grain the consignee might subject the proceeds of the draft in the hands of a collecting bank to his demand for damages resulting from shortage in weights, and the failure of the consignor to deliver all of the grain included in the contract of sale. Russel v. Smith Grain Co., 80 Miss. 688, 32 So. 287 (1902).

Where the complainant has the possession of and sues upon a note indorsed in blank, the burden of proving his want of interest in the paper is on the defendant, although it contains a subsequent indorsement by the complainant to another. Kendrick v. Kyle, 78 Miss. 278, 28 So. 951 (1900).

The holder of a note indorsed in blank who has indorsed it to another may strike out his own indorsement before or after suit, or he may sue and recover as holder without striking it out. Kendrick v. Kyle, 78 Miss. 278, 28 So. 951 (1900).

The assignment of a promissory note secured by recorded lien although the lien was transferred as an incident of the debt was not within the statute of frauds requiring grants, assignments or transfers of any trust or confidence to be in writing. Klaus v. Moore, 77 Miss. 701, 27 So. 612 (1900).

All writings for the payment of money are assignable under this section, and although payment be dependent on a future contingency the assignee can maintain an action against the maker on the happening of such contingency. Heckler v. Frankenbush, 76 Miss. 780, 25 So. 670 (1899).

A contract violative of public policy or of a positive rule of law or against good morals would not be enforced even at the suit of an innocent transferee although it be evidenced by a promissory note. Montjoy v. Delta Bank, 76 Miss. 402, 24 So. 870 (1899).

A provision in a promissory note for a reasonable attorney's fee for collecting the same, did not affect its negotiability nor impair the liability of an indorser. Clifton v. Bank of Aberdeen, 75 Miss. 929, 23 So. 394 (1898).

While the pledgee of a promissory note held as collateral security for debt might collect it, he had no right to sell it unless authorized to do so. Boswell v. Thigpen, 75 Miss. 308, 22 So. 823 (1897).

Where the seller in a separate written contract reserved the legal title to the property, as security for the price and also took the purchaser's note, an assignment of the note carried with it as an incident the right to enforce the contract as a security. Ross-Meehan Brake-Shoe Foundry Co. v. Pascagoula Ice Co., 72 Miss. 608, 18 So. 364 (1895).

The maker of a rent-note payable to bearer and transferred in good faith for value before maturity was precluded from defense to it in an attachment thereon for rent, just as in an ordinary action. Davis v. Blanton, 71 Miss. 821, 15 So. 132 (1894).

The fact that a note was executed for the purpose of being negotiated, and that it was so negotiated, does not take it out of the operation of this section; to have that effect there must be such a sinister design as would create an estoppel. Millsaps v. Merchants' & Planters' Bank, 71 Miss. 361, 13 So. 903 (1893).

A written obligation reciting that the maker was bound to "Millsaps College or bearer" in a certain sum to be paid to the said college or its assigns if it should be permanently located at Jackson, and in consideration of the benefit therefrom, was not governed by the former section, but was negotiable as at common law, and it being payable to bearer, any holder for value, whether by written assignment or not, might sue in his own name. Hart v. Taylor, 70 Miss. 655, 12 So. 553 (1893).

This section applies to indorsements in blank as well as to special indorsements. Etheridge v. Gallagher, 55 Miss. 458 (1877).

A receipt by a bailee for an envelope, "sealed and said to contain" a certain sum of money, was assignable. Hunt & Vaughan v. Shackleford, 55 Miss. 94 (1877).

A bond conditioned for the performance of any service, duty, or act, cannot be assigned so as to transfer the legal title under this section. Shackleford v. Franks, 25 Miss. 49 (1852).

Writings for conditional payment of money were assignable. Shields v. Taylor & Tarpley, 25 Miss. 13 (1852).

This section made those notes negotiable which were not so under the law merchant, and vested the assignee by indorsement with the legal title. Bacon v. Cohea, 20 Miss. (12 S. & M.) 516 (1849).

A promise in writing to pay a sum certain "in notes of the banks of the state of Mississippi," was assignable by indorsement. Besancon v. Shirley, 17 Miss. (9 S. & M.) 457 (1848).

Notes made payable at a bank are within the statute. Allein v. Agricultural Bank, 11 Miss. (3 S. & M.) 48 (1844).

Inland bills of exchange are within the scope of this section. Kershaw v. Merchants' Bank, 8 Miss. (7 Howard) 386, 40 Am. Dec. 70 (1843).

By assignment or delivery of a promissory note, the assignee was immediately vested with all the rights of the payee, and a subsequent garnishment cannot affect the same. Oldham v. Ledbetter, 2 Miss. (1 Howard) 43, 26 Am. Dec. 690 (1834).

3. —Instruments payable to bearer.

The holder of a bill of exchange payable to bearer and by him endorsed in blank was held to be prima facie a bona fide holder for value. Gillespie v. Planters' Oil-Mill & Mfg. Co., 76 Miss. 406, 24 So. 900 (1899).

Similarly, a draft payable to the order of the drawee was in effect payable to the bearer, and was not within such statute. Columbus Ins. & Banking Co. v. First Nat'l Bank, 73 Miss. 96, 15 So. 138 (1894).

A note payable to the maker's order, and by him indorsed in blank before delivery was in effect payable to bearer, and therefore not subject to this section. Bank of Winona v. Wofford, 71 Miss. 711, 14 So. 262 (1893).

In actions under the former statute, a bond, bill, or note payable to bearer was held not to be within the statute. Craig v. Vicksburg, 31 Miss. 216 (1856); Stokes v. Winslow, 31 Miss. 518 (1856); Mercien & Sears v. Cotton, 34 Miss. 64 (1857); Winstead v. Davis, 40 Miss. 785 (1866).

4. —Instruments payable out of state, or executed out of state and payable within state.

A draft for the price of goods drawn in another state on the purchaser in this state, payable and accepted here, which was before acceptance assigned with the bill of lading for the goods in such other state was within this section. Miller v. American Nat'l Bank, 76 Miss. 84, 23 So. 439 (1898).

A bill of exchange drawn on a person out of the state is not within this section. Coffman v. Bank of Kentucky, 41 Miss. 212 (1866); Harrison v. Pike Bros. & Co., 48 Miss. 46 (1873).

A promissory note, executed in, but payable out of, the state, was not within this section. Emanuel v. White, 34 Miss. 56, 69 Am. Dec. 385 (1857).

5. —Judgments.

This section had no application to judgments. Holly v. Cook, 70 Miss. 590, 13 So. 228 (1893).

Where pending an action defendant recovered a judgment against plaintiff, the latter after recovering a judgment could not maintain a bill in chancery to compel the setting off of the second judgment, if before the recovery by plaintiff the defendant had assigned his judgment. Holly v. Cook, 70 Miss. 590, 13 So. 228 (1893).

6. Defenses; estoppel.

Any defense to instruments not payable to order or bearer that could be made prior to Negotiable Instruments Law might be made by maker against purchaser for value, without notice. J.W. McNees Motor

Co. v. Brumfield, 157 Miss. 132, 126 So. 898 (1930).

Partial failure of consideration of promissory note might be pleaded by maker, sued thereon by payee, as defense pro tanto. Coulson v. Stevens, 122 Miss. 797, 85 So. 83 (1920).

A plea that the note sued upon was executed upon the payee's promise to credit the amount upon another note for a larger sum previously executed, and which the payee represented he still held, but which in fact he had transformed, and that the larger note had been paid presented a defense under this section. Robertshaw v. Britton, 74 Miss. 873, 21 So. 523 (1897).

The maker of a note was not estopped to deny the existence of a consideration because he knew that it was to be discounted by a certain person, if he made no representation to and concealed no fact from such person. Merchants' & Planters' Bank v. Millsaps, 15 So. 659 (Miss. 1894).

The maker of a rent-note payable to bearer and transferred in good faith for value before maturity was precluded from defense to it in an attachment thereon for rent, just as in an ordinary action. Davis v. Blanton, 71 Miss. 821, 15 So. 132 (1894).

Under this section in an action by assignee of a note against the maker admissions or representations made by payee as an inducement to its execution where admissible as against the assignee. Millsaps v. Merchants' & Planters' Bank, 71 Miss. 361, 13 So. 903 (1893).

A waiver of all defenses in the face of the note would not preclude the maker from relying on the statute in a suit by an indorsee for value. Union Nat'l Bank v. Fraser, 63 Miss. 231 (1885).

The defenses allowed in the statute applied both to paper negotiable at common law and to that made negotiable by the statute. Brown v. Union Bank, 62 Miss. 754 (1885).

Accommodation paper was not within the former statute as to defenses. Meggett v. Baum, 57 Miss. 22 (1879).

Negotiable Instruments Law applied only to defenses between those connected with the legal title, and not to those asserting equities in the paper. Hibernian Bank v. Everman, 52 Miss. 500 (1876).

7. Setoffs.

In action for balance due on automobile, buyer charging breach of warranty and failure of consideration and denying in toto seller's claim could not recover by way of setoff all he had paid on automobile. GMAC v. Trull, 166 Miss. 490, 148 So. 390 (1933).

The statute applied only to a setoff against the person with whom the defendant dealt. Savage v. Laclede Bank, 62 Miss. 586 (1885).

The maker of a note might set off against the indorsee a valid claim against the payee purchased from a third party before assignment of the note. Phipps v. Shegogg, 30 Miss. 241 (1855).

A setoff against the assignee could not be pleaded against the payee in a suit on a note which the payee was forced to take up at maturity. Maury v. Jeffers, 12 Miss. (4 S. & M.) 87 (1845).

A setoff acquired after notice of assignment could not be availed of against the assignee; and suit on the note by the assignee or the assignor for his use amounted to notice. Northern Bank v. Kyle, 8 Miss. (7 Howard) 360 (1843).

RESEARCH REFERENCES

ALR. Insanity of maker, drawer, or indorser as defense against holder in due course. 24 A.L.R.2d 1380.

Waiver or estoppel with respect to assertion, as setoff or counterclaim against assignee, of claim valid as against assignor. 51 A.L.R.2d 886.

Am Jur. 6 Am. Jur. 2d, Assignments, §§ 15 et seq., 134 et seq.

11 Am. Jur. 2d, Bills and Notes §§ 185 et seq., 193 et seq., 217 et seq.

2A Am. Jur. Pl & Pr Forms (Rev), Assignments, Form 26 (allegation of assignment of contract to purchase land).

2A Am. Jur. Pl & Pr Forms (Rev), Assignments, Forms 21-24 (complaints in assignee's actions).

2A Am. Jur. Pl & Pr Forms (Rev), Assignments, Forms 91-97 (parties to actions).

2B Am. Jur. Legal Forms 2d, Assignments §§ 25:41-25:46, 25:49-25:34, 25:63 (general assignments of contract rights).

3B Am. Jur. Legal Forms 2d, Bills and Notes, § 41:75 (assignment of promissory note).

3B Am. Jur. Legal Forms 2d, Bills and Notes, § 41:76 (notice to obligor of assignment of secured promissory note).

9 Am. Jur. Proof of Facts, Promissory Notes, Proof No. 1 (proving prima facie case on check or note).

CJS. 6A C.J.S., Assignments §§ 31-34.

10 C.J.S., Bills and Notes § 139 et seq.

Law Reviews. 1983 Mississippi Supreme Court Review: Article 9 priority provisions and right of set-off. 54 Miss. L. J. 105, March, 1984.

Practice References. Frederick M. Hart, Negotiable Instruments Under the UCC (Matthew Bender).

Harold Weisblatt, Checks, Drafts, and Notes (Matthew Bender).

§ 75-13-3. Suits on indorsed bills and notes.

An action shall not be maintained on a bill of exchange or promissory note which has been indorsed against any one secondarily liable thereon, without joining in the action all persons residing in this state who are liable before such person on the bill or note. The action shall be brought in the county where the party, or some one who is at first liable on said bill or note, shall reside. The clerk shall issue duplicate writs to the several counties for the various defendants.

SOURCES: Codes, 1857, ch. 43, art. 11; 1871, § 2237; 1880, § 1135; 1892, § 3516; 1906, § 4013; Hemingway's 1917, § 2575; 1930, § 2854; 1942, § 239.

Cross References — Promissory note, defined, see § 1-3-43.

Judgment upon garnishment as affecting surety or accommodation indorser, see § 11-35-55.

Rights of holder of negotiable instruments, see § 75-3-301 et seq.

Liability of parties to negotiable instruments, see § 75-3-401 et seq.

Effect of judgment against one of joint and several debtors, see § 85-5-3.

Rights of surety, see §§ 87-5-1 through 87-5-9.

JUDICIAL DECISIONS

1. In general.
2. Venue.

1. In general.

The requirement that the maker of a note be joined as a party defendant in a suit against the endorsers, is satisfied where a separate action against the maker was consolidated with one against the indorsers, without their objection, and a single judgment is rendered against the defendants. Elliott v. Harrigill, 241 Miss. 877, 133 So. 2d 612 (1961), error overruled, 241 Miss. 883, 134 So. 2d 462 (1961).

Check payable to attorney or bearer, indorsed by attorney and delivered to plaintiff, was a "bill of exchange" on which drawer was primarily liable and attorney secondarily liable. Parrish v. Feldman, 182 Miss. 77, 180 So. 610 (1938), error overruled, 182 Miss. 81, 181 So. 336 (1938).

Statute is for benefit of persons secondarily liable and cannot be revoked by person primarily liable. Parrish v. Feldman, 182 Miss. 77, 180 So. 610 (1938), error overruled, 182 Miss. 81, 181 So. 336 (1938).

Statute held for benefit of drawers and indorsers. Parrish v. Feldman, 182 Miss. 77, 180 So. 610 (1938), error overruled, 182 Miss. 81, 181 So. 336 (1938).

Guarantors jointly executing guaranty held primarily and equally liable to guarantee. Enochs & Flowers, Ltd. v. Roell, 170 Miss. 44, 154 So. 299 (1934).

Guarantee, having sued all guarantors, could discontinue action against one without involving res judicata doctrine. Enochs & Flowers, Ltd. v. Roell, 170 Miss. 44, 154 So. 299 (1934).

The statute is for the benefit of parties secondarily liable, and not of those primarily so. J.S. Hamilton & Co. v. Catchings & Co., 58 Miss. 92 (1880).

Who are primarily liable must be determined by the face of the paper itself. J.S. Hamilton & Co. v. Catchings & Co., 58 Miss. 92 (1880).

The omission of proper parties can be taken advantage of by demurrer if the facts appear in the pleading; otherwise, by plea in abatement. Lillard v. Planters' Bank, 4 Miss. (3 Howard) 78 (1838); Stiles v. Inman, 55 Miss. 469 (1877).

The statute does not embrace joint makers, even though one of them be a surety; and it is not error to dismiss as to one and take judgment against the other, even if such other be the surety. Moore v. Knox, 46 Miss. 602 (1872).

The holder of an indorsed joint promissory note or bill of exchange may sue out an attachment against any one of the makers. Crump & Co. v. Wooten, 41 Miss. 611 (1868).

The statute does not apply to the makers of a note which has never been indorsed. Thompson v. President, Directors & Co. of Planters' Bank, 10 Miss. (2 S. & M.) 476 (1844).

2. Venue.

Action brought in county of indorser's residence should be transferred to county of drawer's residence on drawer's request. Parrish v. Feldman, 182 Miss. 77, 180 So. 610 (1938), error overruled, 182 Miss. 81, 181 So. 336 (1938).

Where defendant's motion asked the case be dismissed, or that he be permitted to file motion to transfer to county of his residence, and alleged sufficient grounds for transfer, trial court in treating motion as one either to dismiss or to transfer should have transferred case to county of defendant's residence. Parrish v. Feldman, 182 Miss. 77, 180 So. 610 (1938), error overruled, 182 Miss. 81, 181 So. 336 (1938).

RESEARCH REFERENCES

ALR. Appealability of judgment confirming or setting aside arbitration award. 7 A.L.R.3d 608.

Am Jur. 12 Am. Jur. 2d, Bills and Notes § 577 et seq.

5 Am. Jur. Pl & Pr Forms (Rev), Bills and Notes, Form 61 (complaint against maker and indorser by holder in due course).

CJS. 10 C.J.S., Bills and Notes § 251 et seq.

Practice References. Reitman and Harold, Checks, Drafts, and Notes (Matthew Bender).

§ 75-13-5. Discontinuance.

The plaintiff may discontinue his suit, before verdict, against any of the indorsers, or parties secondarily liable, on payment of the costs that have accrued from joining such party in the suit.

SOURCES: Codes, 1857, ch. 43, art. 14; 1871, § 2240; 1880, § 1137; 1892, § 3517; 1906, § 4014; Hemingway's 1917, § 2576; 1930, § 2855; 1942, § 240.

Cross References — Effect of releasing one or more joint debtors, see § 85-5-1.

JUDICIAL DECISIONS

1. In general.

The plaintiff cannot dismiss against the parties primarily liable and get judgment against those who are only secondarily so. Wilkinson & Turney v. Tiffany, Duvall & Co., 6 Miss. (5 Howard) 411 (1841).

RESEARCH REFERENCES

Am Jur. 24 Am. Jur. 2d, Dismissal, Discontinuance, and Nonsuit, §§ 32, 33.

8 Am. Jur. Pl & Pr Forms (Rev), Form 60 (order discontinuing action as to one of several defendants).

8 Am. Jur. PL & Pr Forms (Rev), Form 54 (motion to discontinue action as to one of several defendants).

§ 75-13-7. Duties of the clerks and sheriffs with executions.

The clerk or justice of the peace shall indorse on all executions issued on judgments rendered in suits on promissory notes and bills of exchange the names of the makers, drawers, acceptors, and indorsers, so as to designate the order in which they are liable. The sheriff or other officer shall make the money on such executions out of the property of the maker or makers, acceptor or acceptors. It shall not be lawful to levy on the property of the indorsers unless sufficient property of the makers, drawers, or acceptors cannot be found by the sheriff out of which the plaintiff's money and costs can be made; and, in that case, the sheriff may proceed with the execution against the defendant next liable, and so on, until the execution be satisfied.

SOURCES: Codes, 1857, ch. 43, art. 6; 1871, § 2242; 1880, § 1139; 1892, § 3518; 1906, § 4015; Hemingway's 1917, § 2577; 1930, § 2856; 1942, § 241.

Editor's Note — Pursuant to Miss. Const., Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Executions, generally, see § 13-3-1 et seq.

Liability of parties to negotiable instrument, see § 75-3-401 et seq.

JUDICIAL DECISIONS

1. In general.

Endorser's name need not be noted as endorser on execution of judgment on note against maker and endorser who has also guaranteed payment. Quinn v. Alexander, 125 Miss. 690, 88 So. 170 (1921).

The judgment rendered against the maker and last indorser may be voluntarily discharged by the indorser and an execution may be issued in his favor against the first indorser, and that, though the maker be solvent. Pope v. Bowman, 31 Miss. 639 (1856).

RESEARCH REFERENCES

Am Jur. 30 Am. Jur. 2d, Executions § 1 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Executions, Forms 61-63 (executions against

multiple defendants).

§ 75-13-9. Remedy of party paying execution.

A party to such execution, who shall pay it, shall, as against any other party to it who is liable to him for the sum paid or any part of it, be entitled to the benefit of all the provisions for sureties in the chapter entitled "Principal and Surety," being Chapter 5 of Title 87, Mississippi Code of 1972.

SOURCES: Codes, 1880, § 1140; 1892, § 3519; 1906, § 4016; Hemingway's 1917, § 2578; 1930, § 2857; 1942, § 242.

Cross References — Contract of accommodation party to negotiable instrument, see § 75-3-419.

Rights of surety, see § 87-5-1 et seq.

JUDICIAL DECISIONS

1. In general.

The party in such case becomes subrogated to the lien and rights of the plaintiff, and is entitled to execution in his favor against the other defendant; and such right extends to an indorser of a draft on which judgment is rendered against him and the principal debtor. Yates v. Mead, 68 Miss. 787, 10 So. 75 (1891).

RESEARCH REFERENCES

Am Jur. 3B Am. Jur. Legal Forms 2d, Bills and Notes § 41:77 et seq. (rights and liabilities of parties).

§ 75-13-11. Holidays; execution on, not void.

Nothing in any law of the State of Mississippi, shall in any manner whatsoever, affect the validity, or render void or voidable, the payment, certification or acceptance of a check, or other negotiable instrument, or any other transaction by a bank in this state, because done or performed on any legal holiday, except Sunday, provided such payment, certification, acceptance or other transaction would be valid if done or performed on a day other than a legal holiday or Sunday.

SOURCES: Codes, 1942, § 243; Laws, 1936, ch. 170.

Cross References — Generally, as to what are legal holidays, see § 3-3-7.

Signing negotiable instrument, see § 75-3-401.

Acceptance of negotiable instrument, see §§ 75-3-409, 75-3-410.

Certification of check, see § 75-3-409, 75-3-411.

Payment or satisfaction of negotiable instrument, see § 75-3-603.

JUDICIAL DECISIONS

1. In general.

Notes and a deed of trust securing the same are not void because actually signed on a Sunday, when they were drawn up and delivered to the signers on a secular day and were delivered back to the beneficiary on a secular day and the beneficiary had no knowledge that the signatures were affixed on Sunday. Nerren v. W.T. Rawleigh Co., 222 Miss. 21, 75 So. 2d 78 (1954).

CHAPTER 15

Mississippi Money Transmitters Act

Sec.
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§ 75-15-1. Citation.

This chapter may be cited as the "Mississippi Money Transmitters Act."

SOURCES: Codes, 1942, § 5131-01; Laws, 1966, ch. 257, § 1; Laws, 2010, ch. 448, § 1, eff from and after July 1, 2010.

Cross References — Prohibition against discounting pay checks, see §§ 71-1-37, 71-1-39.

Generally, as to negotiable instrument, see § 75-3-101 et seq.

RESEARCH REFERENCES

Practice References. Harold Weisblatt, Checks, Drafts, and Notes (Matthew Bender).

§ 75-15-3. Definitions.

For the purposes of this chapter:

(a) "Check" means any check, draft, money order, personal money order or other instrument, including but not limited to stored value cards, for the transmission or payment of money. The format of a check may be either paper, electronic, plastic or any combination thereof.

(b) "Commissioner" means the Commissioner of Banking and Consumer Finance of the State of Mississippi.

(c) "Deliver" means to deliver a check to the first person who in payment for same makes or purports to make a remittance of or against the face amount thereof, whether or not the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer signs the check.

(d) "Executive officer" means the licensee's president, chairman of the executive committee, senior officer responsible for the licensee's business, chief financial officer and any other person who performs similar functions.

(e) "Licensee" means a person duly licensed by the commissioner under this chapter.

(f) "Monetary value" means a medium of exchange, whether or not redeemable in money.

(g) "Money transmission" means to engage in the business of the sale or issuance of checks or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including but not limited to wire, facsimile or electronic transfer.

(h) "Outstanding check" means any check issued or sold in Mississippi by or for the licensee that has been reported as sold but not yet paid by or for the licensee.

(i) "Person" means any individual, partnership, association, joint-stock association, trust or corporation, but does not include the United States government or the government of this state.

(j) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission or handling of money, whether the instrument is signed by the seller or by the purchaser or remitter or some other person.

(k) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(*l*) "Sell" means to sell, to issue or to deliver a check.

(m) "Stored value" means monetary value that is evidenced by an electronic record.

SOURCES: Codes, 1942, § 5131-02; Laws, 1966, ch. 257, § 2; Laws, 2000, ch. 621, § 8; Laws, 2003, ch. 340, § 1; Laws, 2010, ch. 448, § 2, eff from and after July 1, 2010.

§ 75-15-5. License required.

No person, except those specified in Section 75-15-7, shall engage in the business of money transmission, as a service or for a fee or other consideration, without having first obtained a license under this chapter.

SOURCES: Codes, 1942, § 5131-03; Laws, 1966, ch. 257, § 3; Laws, 2010, ch. 448, § 3, eff from and after July 1, 2010.

Cross References — Penalties for engaging in the business of selling checks, etc., without a license, see § 75-15-31.

§ 75-15-7. Exemption from license requirement.

Nothing in this chapter shall apply to the sale or issuance or delivering of checks by:

(a) Any financial institution whose deposits are insured by any agency of the United States government or any trust company authorized to do business in this state;

(b) The government of the United States or any department or agent thereof;

(c) The State of Mississippi or any municipal corporation, county or other political subdivision of this state;

(d) Agents of a licensee, as provided for in Section 75-15-17, provided that this exemption shall apply only to the agent's acts on behalf of the licensee and this exemption shall not exempt the agent from the provisions of this chapter where he conducts money transmissions for his own account;

(e) Attorneys-at-law, as to checks issued in the regular course of the practice of law;

(f) Persons not carrying on the trade or business of money transmission, this exemption is intended to include persons who conduct money transmissions only as an incidental act to another trade or business regularly carried on by them and persons who only occasionally and infrequently conduct money transmissions for another person; or

(g) The Nationwide Mortgage Licensing System and Registry for mortgage brokers, mortgage lenders and mortgage loan originators.

SOURCES: Codes, 1942, § 5131-04; Laws, 1966, ch. 257, § 4; Laws, 2003, ch. 340, § 2; Laws, 2010, ch. 448, § 4, eff from and after July 1, 2010.

Cross References — No license under this chapter required of licensee's agent acting on behalf of licensee, see § 75-15-17.

Exempt agents, see § 75-15-21.

§ 75-15-9. Applications and qualifications.

Each application for a license to engage in the business of money transmission shall be made in writing and under oath to the commissioner in such form as he may prescribe. The application shall state the full name and business address of:

(a) The proprietor, if the applicant is an individual;

(b) Every member, if the applicant is a partnership or association;

(c) The corporation and each executive officer and director thereof, if the applicant is a corporation;

(d) Every trustee and officer if the applicant is a trust;

(e) The applicant shall have a net worth of at least Twenty-five Thousand Dollars ($25,000.00) plus Fifteen Thousand Dollars ($15,000.00) for each location in excess of one (1) at which the applicant proposes to conduct money transmissions in this state, computed according to generally accepted accounting principles, but in no event shall the net worth be required to be in excess of Two Hundred Fifty Thousand Dollars ($250,000.00);

(f) The financial responsibility, financial condition, business experience and character and general fitness of the applicant shall be such as reasonably to warrant the belief that applicant's business will be conducted honestly, carefully and efficiently;

(g) Each application for a license shall be accompanied by an investigation fee of Fifty Dollars ($50.00) and license fee in the amount required by Section 75-15-15. All fees collected by the commissioner under the provisions of this chapter shall be deposited into the Consumer Finance Fund of the Department of Banking and Consumer Finance;

(h) An applicant shall not have been convicted of a felony in any jurisdiction or a misdemeanor of fraud, theft, forgery, bribery, embezzlement, or making a fraudulent or false statement in any jurisdiction.

SOURCES: Codes, 1942, § 5131-05; Laws, 1966, ch. 257, § 5; Laws, 1995, ch. 373, § 1; Laws, 2010, ch. 448, § 5, eff from and after July 1, 2010.

Cross References — Accompanying statement and bond, see § 75-15-11.
Investigation of and granting license to applicant, see § 75-15-13.
Annual license fee, see § 75-15-15.

§ 75-15-11. Accompanying financial statement, bond, proof of registration as money service business, and set of fingerprints; denial of license to certain individuals convicted of certain crimes.

Each application for a license shall be accompanied by:

(a) Certified financial statements, reasonably satisfactory to the commissioner, showing that the applicant has a net worth of at least Twenty-five Thousand Dollars ($25,000.00) plus Fifteen Thousand Dollars ($15,000.00) for each location in excess of one (1) at which the applicant proposes to conduct money transmissions in this state, computed according to generally accepted accounting principles, but in no event shall the net worth be required to be in excess of Two Hundred Fifty Thousand Dollars ($250,000.00).

(b) A surety bond issued by a bonding company or insurance company authorized to do business in this state, in the principal sum of Twenty-five Thousand Dollars ($25,000.00) or in an amount equal to outstanding money transmissions in Mississippi, whichever is greater, but in no event shall the bond be required to be in excess of Five Hundred Thousand Dollars ($500,000.00). However, the commissioner may increase the required amount of the bond upon the basis of the impaired financial condition of a licensee as evidenced by a reduction in net worth, financial losses or other relevant criteria. The bond shall be in form satisfactory to the commissioner and shall run to the state for the use and benefit of the Department of Banking and Consumer Finance and any claimants against the applicant or his agents to secure the faithful performance of the obligations of the applicant and his agents with respect to the receipt, handling, transmission and payment of money in connection with money transmissions in Mississippi. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety on the bond shall have the right to cancel the bond upon giving sixty (60) days' notice in writing to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. Any claimants against the applicant or his agents may themselves bring suit directly on the bond, or the Attorney General may bring suit thereon in behalf of those claimants, either in one (1) action or successive actions.

(c) In lieu of the corporate surety bond, the applicant may deposit with the State Treasurer bonds or other obligations of the United States or guaranteed by the United States or bonds or other obligations of this state or of any municipal corporation, county, or other political subdivision or agency of this state, or certificates of deposit of national or state banks doing business in Mississippi, having an aggregate market value at least equal to that of the corporate surety bond otherwise required. Those bonds or obligations or certificates of deposit shall be deposited with the State Treasurer to secure the same obligations as would a corporate surety bond, but the depositor shall be entitled to receive all interest and dividends thereon and shall have the right to substitute other bonds or obligations or certificates of deposit for those deposited, with the approval of the commissioner, and shall be required so to do on order of the commissioner made for good cause shown. The State Treasurer shall provide for custody of the bonds or obligations or certificates of deposits by a qualified trust company or bank located in the State of Mississippi or by any Federal Reserve Bank. The compensation, if any, of the custodian for acting as such under this section shall be paid by the depositing licensee.

(d) Proof of registration as a money service business per 31 CFR Section 103.41, if applicable.

(e) A set of fingerprints from any local law enforcement agency for each owner of a sole proprietorship, partners in a partnership or principal owners of a limited liability company that own at least ten percent (10%) of the voting shares of the company, shareholders owning ten percent (10%) or more of the outstanding shares of the corporation, except publically traded corporations and their subsidiaries, and any other executive officer with significant oversight duties of the business. In order to determine the applicant's suitability for license, the commissioner shall forward the fingerprints to the Department of Public Safety for a state criminal history records check, and the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history records check. The department shall not issue a license if it finds that the applicant, or any person who is an owner, partner, director or executive officer of the applicant, has been convicted of: (i) a felony in any jurisdiction; or (ii) a crime that, if committed within the state, would constitute a felony under the laws of this state; or (iii) a misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction. For the purposes of this chapter, a person shall be deemed to have been convicted of a crime if the person has pleaded guilty to a crime before a court or federal magistrate, or plea of nolo contendere, or has been found guilty of a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension of a sentence, unless the person convicted of the crime has received a pardon from the President of the United States or the Governor or other pardoning authority in the jurisdiction where the conviction was obtained.

SOURCES: Codes, 1942, § 5131-06; Laws, 1966, ch. 257, § 6; Laws, 1995, ch. 373, § 2; Laws, 2010, ch. 448, § 6, eff from and after July 1, 2010.

Editor's Note — 31 CFR 103.41, referred to in this section, was removed by 75 FR 65806, October 26, 2010, effective March 1, 2011.

Cross References — Investigation of and granting license to applicant, see § 75-15-13.

License fee, see § 75-15-15.

Statement listing locations, offices and agencies, see § 75-15-19.

Limitation on outstanding checks, see § 75-15-25.

Revocation of license, see § 75-15-27.

Bond increase, see § 75-15-29.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. Legal Forms 2d, Licenses and Permits § 164:22 (financial responsibility).

§ 75-15-12. Licensees required to possess permissible investments having an aggregate market value of at least the aggregate amount of outstanding checks.

(1) In addition to the bond required in Section 75-15-11, a licensee must possess permissible investments having an aggregate market value, calculated

in accordance with generally accepted accounting principles, of not less than the aggregate amount of all outstanding checks issued or sold or money received for transmission by the licensee in the United States. This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding checks does not exceed the bond or other security devices posted by the licensee in accordance with Section 75-15-11.

(2) Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding checks and money received for transmission and may not be considered an asset or property of the licensee in the event of bankruptcy, receivership or a claim against the licensee unrelated to any of the licensee's obligations under this chapter.

(3) Permissible investments mean:

(a) Cash;

(b) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(c) Bills of exchange or time drafts drawn on and accepted by federally insured financial depository institutions;

(d) Any investment bearing a rating of one (1) of the three (3) highest grades as defined by a nationally recognized organization that rates such securities;

(e) Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest of the United States, or any obligations of any state, municipality or any political subdivision thereof;

(f) Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of those securities or a fund composed of one or more permissible investments as set forth in this section;

(g) Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;

(h) Receivables that are due to a licensee from its agents, which are not past due or doubtful of collection; or

(i) Any other investments approved by the commissioner.

(4) The commissioner may limit or disallow for purposes of determining compliance with this section an investment, surety bond, letter of credit or other security otherwise permitted by this section if the commissioner determines it to be unsatisfactory for investment purposes or to pose a significant supervisory concern.

SOURCES: Laws, 2010, ch. 448, § 16, eff from and after July 1, 2010.

§ 75-15-13. Investigation; granting of license.

Upon the filing of the application, the payment of the investigation fee and license fee, and the approval by the commissioner of the bond or securities delivered under Section 75-15-11, the commissioner shall investigate the financial responsibility, financial and business experience, character and general fitness of the applicant, and, if he deems it advisable, of its officers and directors, and if he finds that the applicant (and its officers and directors, if investigated) has the requisite qualifications to meet the requirements of this chapter and that its (or their) qualifications are such as to warrant the belief that the applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community, he shall issue to the applicant a license to engage in the business of money transmission subject to the provisions of this chapter.

SOURCES: Codes, 1942, § 5131-07; Laws, 1966, ch. 257, § 7; Laws, 2010, ch. 448, § 7, eff from and after July 1, 2010.

Cross References — Annual license fee, see § 75-15-15.
Revocation of license, see § 75-15-27.

§ 75-15-15. Annual license fee.

Each licensee shall pay to the commissioner with his initial application a license fee of Seven Hundred Fifty Dollars ($750.00), and annually thereafter on or before April 1 of each year, a renewal fee of Four Hundred Dollars ($400.00), plus Fifty Dollars ($50.00) for each location in excess of one (1) in Mississippi through which the licensee plans to conduct money transmissions during the license year for which the fee is paid, provided that in no event shall the annual renewal fee exceed One Thousand Dollars ($1,000.00).

SOURCES: Codes, 1942, § 5131-08; Laws, 1966, ch. 257, § 8; Laws, 2000, ch. 621, § 9; Laws, 2010, ch. 448, § 8, eff from and after July 1, 2010.

Cross References — Investigation fee, see §§ 75-15-9, 75-15-13.
Revocation of license for failure to pay annual license fee as required by this section, see § 75-15-27.

§ 75-15-17. Agents; appointment of subagents to conduct money transmission prohibited.

A licensee may conduct his business at one or more locations within this state and through or by means of such agents as the licensee may from time to time designate or appoint. No license under this chapter shall be required of any agent of a licensee, provided that this exemption shall apply only to the agent's acts on behalf of the licensee and this exemption shall not exempt the agent from the provisions of this chapter where he conducts money transmissions for his own account. The licensee shall require each of his appointed agents to display prominently on the agent's premises, where same may be readily viewed by prospective clients or purchasers, a printed certificate signed by an authorized official of licensee setting forth in bold letters the names of the licensee and agent and stating that the licensee holds a valid and existing license issued by the commissioner under this chapter and that agent is a duly authorized agent of licensee. Neither a licensee nor an agent may appoint a subagent to conduct money transmissions.

SOURCES: Codes, 1942, § 5131-09; Laws, 1966, ch. 257, § 9; Laws, 2010, ch. 448, § 9, eff from and after July 1, 2010.

Cross References — Exemption of sale or issuance or delivering of checks by agents of licensee from provisions of this chapter, see § 75-15-7.

Exempt agents, see § 75-15-21.

Limitations on authority of agents, see § 75-15-23.

§ 75-15-19. Monthly report of total amount of outstanding money transmissions; annual financial statement; examination or audit of books and records; certain books and records to be maintained for five years.

(1)(a) Each licensee shall file with the commissioner within fifteen (15) days of the last business day of each month a report of the total amount of outstanding money transmissions in Mississippi. The principal sum of the surety bond or deposit required in Section 75-15-11 shall be adjusted, if appropriate, to reflect any changes in outstanding money transmissions. Licensees who maintain a surety bond in the principal sum of at least Five Hundred Thousand Dollars ($500,000.00) or a securities deposit having an aggregate market value of at least equal to Five Hundred Thousand Dollars ($500,000.00) shall be required to report the total amount of outstanding money transmissions in Mississippi on a quarterly basis.

(b) Each licensee shall file an annual financial statement with the commissioner, audited by an independent certified public accountant or an independent registered accountant, within five (5) months after the close of the licensee's fiscal year. The financial statement shall include a balance sheet, a profit and loss statement, and a statement of retained earnings of the licensee and the licensee's agents resulting from the business of money transmission.

(2) The commissioner may conduct or cause to be conducted an annual examination or audit of the books and records of any licensee at any time or times he deems proper, the cost of the examination or audit to be borne by the licensee. The refusal of access to the books and records shall be cause for the revocation of its license. The commissioner may charge the licensee an examination fee in an amount not less than Three Hundred Dollars ($300.00) nor more than Six Hundred Dollars ($600.00) for each licensed office, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi.

(3) Each licensee shall maintain the following books and records for a period of five (5) years and the books and records shall be available to the commissioner for inspection:

(a) A record of each money transmission sold;

(b) A general ledger, posted at least monthly, containing all assets, liabilities, capital, income and expense accounts;

(c) Bank statements and bank reconciliation records;

(d) Records of outstanding money transmissions;

(e) Records of each money transmission paid within the five-year period;

(f) A list of the names and addresses of all authorized agents; and

(g) Any other records the commissioner may reasonably require by rule or regulation.

The records required under this section may be maintained in photographic, electronic or other similar form.

(4) Each licensee must maintain a written Bank Secrecy Act/Anti-Money Laundering Program that complies with 31 CFR Section 103.125, if applicable.

(5) The commissioner may conduct a joint examination with representatives of other departments or agencies of another state or with the federal government. The commissioner may accept an examination report of another state or of the federal government or a report prepared by a certified public accountant instead of conducting an examination. A joint examination or an acceptance of an examination report does not preclude the commissioner from conducting his own examination. The report of a joint examination or an examination report accepted by the commissioner under this section is an official report of the commissioner for all purposes.

(6) The department may adopt the necessary administrative regulations, not inconsistent with state law, for the enforcement of this chapter.

SOURCES: Codes, 1942, § 5131-10; Laws, 1966, ch. 257, § 10; Laws, 1995, ch. 373, § 3; Laws, 2000, ch. 621, § 10; Laws, 2003, ch. 340, § 3; Laws, 2007, ch. 397, § 1; Laws, 2010, ch. 448, § 10, eff from and after July 1, 2010.

Editor's Note — 31 CFR 103.125, referred to in this section, was removed by 75 FR 65806, October 26, 2010, effective March 1, 2011.

Cross References — Revocation of license for failure to file statement, see § 75-15-27.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-15-21. Exempt agents.

Nothing in this chapter shall be deemed to require a licensee to list agents which are exempt by the provisions of Section 75-15-7 of this chapter.

SOURCES: Codes, 1942, § 5131-11; Laws, 1966, ch. 257, § 11, eff from and after July 1, 1966.

§ 75-15-23. Liability of licensee.

Each licensee shall be liable for the payment of all money transmissions and for all checks that the licensee sells, in whatever form and whether directly or through an agent, as the maker or drawer thereof according to the negotiable instrument laws of this state, and shall be responsible only for those acts of the agent done on behalf of the licensee. Every check sold by a licensee directly or through an agent shall bear the name of the licensee clearly imprinted thereon. During the period of time that a person is an appointed agent for a licensee, the agent shall not directly or indirectly conduct his own money transmission business and the agent shall not be, continue to be, or become an officer, director, stockholder, employee, or agent of any other licensee under this chapter. When a person ceases to be an agent of a licensee, he shall immediately cease displaying his agent's appointment certificate, as provided under Section 75-15-17 of this chapter and shall immediately surrender same to the licensee.

SOURCES: Codes, 1942, § 5131-12; Laws, 1966, ch. 257, § 12; Laws, 2010, ch. 448, § 11, eff from and after July 1, 2010.

Cross References — Agents, see § 75-15-17.

§ 75-15-25. Limitation on outstanding money transmissions or checks in Mississippi.

Whenever the bond or securities deposit required under Section 75-15-11 is less than Five Hundred Thousand Dollars ($500,000.00), the licensee may not at any time have a total amount in outstanding money transmissions or checks in Mississippi, in excess of the bond or securities deposit required of him under Section 75-15-11, and the licensee shall, in accordance with rules and regulations promulgated by the commissioner under this chapter, submit a written report to the commissioner on the last business day of each month regarding his money transmissions outstanding in Mississippi, whether issued by himself or through agents, provided that this limitation shall be the principal sum of the bond or the market value of the securities deposit required of the licensee under Section 75-15-11, and the sum of this limitation shall not be increased by any bond or securities deposit increase required by the commissioner under Section 75-15-29 or by deposit of any revocation order, suspension bond or securities deposit under Section 75-15-27.

SOURCES: Codes, 1942, § 5131-13; Laws, 1966, ch. 257, § 13; Laws, 2006, ch. 354, § 2; Laws, 2010, ch. 448, § 12, eff from and after July 1, 2010.

§ 75-15-27. Revocation of license; notice; hearing; appeals.

Except where a license is automatically revoked without any act of the commissioner as specially provided in this chapter, no license shall be denied or revoked except on ten (10) days' notice (the first day of the ten-day period to be the date stated on the notice, which shall be the day it is mailed) to the applicant or licensee by the commissioner, sent by letter by United States registered mail, return receipt requested, to the applicant's or licensee's business address set forth in the application. Upon receipt of the notice, as stated in the registered mail receipt, the applicant or licensee may, within five (5) days thereafter (which five-day period may be wholly or partially outside of the ten-day period) make written demand for a hearing by the commissioner, which demand, in the case of a revocation notice, must be accompanied by an additional surety bond or securities deposit, as hereafter provided, the principal sum or the market value thereof to be specified by the commissioner in the revocation notice. The revocation notice shall not become final during the period of time in which the licensee may demand such hearing nor if licensee demands a hearing, until the matter has been finally determined by the commissioner or by the courts, provided as to any revocation order, but not a denial order, that the licensee posts together with his written demand for hearing an additional corporate surety bond, written by the same surety that wrote the bond under subsection (b) of Section 75-15-11, or an additional securities deposit in addition to the securities deposit theretofore made by the licensee under subsection (c) of Section 75-15-11 which additional surety bond or securities deposit shall be in a principal amount or of a market value deemed adequate by the commissioner as specified in the revocation order but not exceeding Two Hundred Fifty Thousand Dollars ($250,000.00), provided that if the licensee originally deposited with his application under Section 75-15-11 a corporate surety bond, the additional deposit provided in this section must be another corporate surety bond or an increase of the first one and may not be a deposit of securities, or if the licensee originally deposited securities, the additional deposit shall also be of securities and not a corporate surety bond. The bond or securities deposit shall secure the same obligations as does the corporate surety bond or securities deposit required by Section 75-15-11, but shall be in addition to the bond or securities deposit required thereby. Upon receipt of the written demand, the commissioner shall thereafter, with reasonable promptness, hear and determine the matter as provided by law. If the applicant or licensee deems himself aggrieved by the determination or order of the commissioner, he may within fifteen (15) days after the determination or order, have the determination or order reviewed by an appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing a petition setting out the specific order or action or part thereof by which the person deems himself aggrieved. All those petitions shall be given preferred settings and shall be heard by the court as speedily as possible. Such an appeal shall be perfected upon the posting of a bond for the costs of the appeal accompanied by the petition. Any party to the appeal may appeal to the

Supreme Court of Mississippi from the decree or order of the chancery court, within thirty (30) days from the rendition of the decree or order, in the manner provided by law for appeals to the Supreme Court of Mississippi from chancery courts.

Final denial or revocation of the license, whether automatic or by final determination of the commissioner or the courts, shall cancel as of the date of final revocation all bonds or securities deposits theretofore deposited by the applicant or licensee under any provision of this chapter, provided that the licensee (and his corporate surety, if any) shall not be relieved of any accrued liabilities, and provided further, where the licensee deposited securities, that there shall not be returned to the licensee any of the deposited securities until the commissioner determines that all accrued liabilities (including, but not limited to, the principal sums thereof, accrued interest thereon, and court costs, if any, assessed to the licensee) of the licensee under this chapter have been satisfied in full.

The commissioner may at any time revoke a license, on any ground on which he might refuse to grant a license, for failure to pay an annual fee or for violation of any provision of this chapter, subject to the provisions of this chapter.

A license shall be automatically and finally revoked without any act or further act of the commissioner and without any right of the licensee to any hearing or further hearing by the commissioner or the courts and without any right of the licensee or the commissioner to reinstate or have reinstated the license, in the following instances: (a) at expiration of the sixty-day notice period, if the corporate surety gives notice of cancellation of its bond or any of them; (b) upon failure by licensee to pay when due the annual license fee required by Section 75-15-15; (c) upon failure by licensee to file when due any information required by Section 75-15-19; (d) in case of a revocation notice under the first paragraph of this section, failure by the licensee to demand hearing as provided therein or failure to deposit any additional corporate surety bond or securities deposit as required by the commissioner; (e) upon a license revocation order becoming final at any stage; (f) failure by licensee to deposit when due any additional corporate surety bond or securities deposit required by the commissioner under Section 75-15-29; or (g) upon final conviction of licensee as to any offense covered by Section 75-15-31.

If a revocation order becomes final for any reason or in any manner, the license may not be reinstated, except upon new application as if the licensee had never been licensed before. The commissioner may deny the new application on grounds that a previous application was denied or a previous license to applicant was revoked or any ground or grounds on which he may deny an original application.

SOURCES: Codes, 1942, § 5131-14; Laws, 1966, ch. 257, § 14; Laws, 1995, ch. 373, § 5; Laws, 2010, ch. 448, § 13, eff from and after July 1, 2010.

§ 75-15-29. Bond increase.

Any provision in this chapter to the contrary notwithstanding, the commissioner may at any time, if in his sole opinion the protection of the public so requires, increase the principal sum of the bond or the aggregate market value of the deposit required of any applicant or licensee by Section 75-15-11 but in no case shall the principal sum of the bond or the aggregate market value of the deposit required by Section 75-15-11 exceed Five Hundred Thousand Dollars ($500,000.00) and provided further, that in any situation, where a revocation order has been issued and the licensee involved has posted the additional bond required under Section 75-15-27, for suspension thereof, pending final determination, the commissioner may for the same reasons require the principal sum of the additional, suspension bond to be increased but in no case shall the principal sum thereof exceed Two Hundred Fifty Thousand Dollars ($250,000.00), and provided further that if the licensee originally deposited with his application under Section 75-15-11 a corporate surety bond, the additional increase provided in this section must be by another corporate surety bond or an increase of the first one, written by the same corporate surety that wrote the first one and may not be a deposit of securities or if the licensee originally deposited securities, the additional increase shall also be of securities and not a corporate surety bond.

SOURCES: Codes, 1942, § 5131-15; Laws, 1966, ch. 257, § 15; Laws, 1995, ch. 373, § 6; Laws, 2010, ch. 448, § 14, eff from and after July 1, 2010.

Cross References — Surety bond to accompany each application for license, see § 75-15-11.

Limitation on outstanding checks, see § 75-15-25.

Revocation of license for failure to deposit additional bonds required under this section, see § 75-15-27.

§ 75-15-31. Penalties.

(1) If any person to whom or which this chapter applies or any agent or representative of that person violates any of the provisions of this chapter or attempts to transact the business of conducting money transmissions as a service or for a fee or other consideration, without having first obtained a license from the commissioner under the provisions of this chapter, that person and each such agent or representative shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), and may also be confined to the county jail for not more than twelve (12) months. Each violation shall constitute a separate offense.

(2) If any person engages in business as provided for in this chapter without paying the license fee provided for in this chapter before beginning business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each

day that the person has engaged in the business without a license or after the expiration of a license.

(3) The commissioner may, after notice and hearing, impose a civil penalty against any licensee if the licensee or employee is adjudged by the commissioner to be in violation of the provisions of this chapter. The civil penalty shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order requiring the person to stop and refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

SOURCES: Codes, 1942, § 5131-16; Laws, 1966, ch. 257, § 16; Laws, 2000, ch. 621, § 11; Laws, 2004, ch. 450, § 4; Laws, 2010, ch. 448, § 15, eff from and after July 1, 2010.

Cross References — Revocation of license, see § 75-15-27.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-15-32. Commissioner authorized to examine persons suspected of conducting business requiring a license.

The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required under this chapter.

SOURCES: Laws, 2000, ch. 621, § 12, eff from and after passage (approved May 23, 2000.)

§ 75-15-33. Construction of chapter.

The masculine, feminine and neuter genders shall each include the others and the singular shall include the plural.

SOURCES: Codes, 1942, § 5131-17; Laws, 1966, ch. 257, § 17, eff from and after July 1, 1966.

Cross References — Construction of statutes: gender, see § 1-3-17.

§ 75-15-35. Compliance with state and federal money laundering laws.

Each licensee shall comply with state and federal money laundering laws, including, but not limited to, the federal "Bank Secrecy Act," 12 USC Section 1951 et seq.

SOURCES: Laws, 2010, ch. 448, § 17, eff from and after July 1, 2010.

Editor's Note — The Bank Secrecy Act, referred to in this section, now appears at 31 USCS § 5311 et seq.

CHAPTER 17

Interest, Finance Charges, and Other Charges

General Provisions 75-17-1
Maximum Interest Rates on Public Borrowing 75-17-101

GENERAL PROVISIONS

Sec.
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75-17-3. Evasion of six percent interest law; interest forfeited if higher rate secretly exacted.
75-17-5. Discount, interest, bank issues.
75-17-7. Interest on judgments and decrees.
75-17-9. Partial payments applied.
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75-17-19. Finance charges for credit extended pursuant to revolving charge agreement; annual fees for membership in credit card plan; late payment charges; billing and collection of finance charges; finance charges for closed end credit sales; issuer and debtor may agree to certain terms; 30-day's notice to debtor of any modification of terms.
75-17-21. Maximum finance charges by licensees under Small Loan Regulatory Law and Small Loan Privilege Tax Law; lender option to use rates under this section or Section 75-67-181.
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75-17-33. Announcement of discount rates and indices by Commissioner of Banking and Consumer Finance; recording of maximum finance charge rates.
75-17-35. Computation of interest on refunds of excess rates by public utilities.

§ 75-17-1. Legal rates of interest and finance charges.

(1) The legal rate of interest on all notes, accounts and contracts shall be eight percent (8%) per annum, calculated according to the actuarial method, but contracts may be made, in writing, for payment of a finance charge as otherwise provided by this section or as otherwise authorized by law.

(2) Any borrower or debtor may contract for and agree to pay a finance charge for any loan or other extension of credit made directly or indirectly to a borrower or debtor which will result in a yield not to exceed the greater of ten percent (10%) per annum or five percent (5%) per annum above the discount rate, excluding any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the lender is located, each calculated according to the actuarial method. The rate of finance charge authorized under this subsection (2) shall be known as the "contract rate."

(3) Notwithstanding the foregoing and any other provision of law to the contrary, any partnership, joint venture, religious society, unincorporated association, or domestic or foreign corporation, whether organized for profit or nonprofit, may contract for and agree to pay a finance charge which will result in a yield not to exceed the greater of fifteen percent (15%) per annum or five percent (5%) per annum above the discount rate, excluding any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the lender is located, each calculated according to the actuarial method, on any contract, loan, extension of credit or other obligation under which the principal balance to be repaid shall originally exceed Two Thousand Five Hundred Dollars ($2,500.00), or on any series of advances of money pursuant to a contract if the aggregate of sums advanced or originally proposed to be advanced shall exceed Two Thousand Five Hundred Dollars ($2,500.00); and as to any such agreement, the claim or defense of usury by such partnership, joint venture, religious society, unincorporated association, or corporation, or their successors, guarantors, assigns or anyone on their behalf is prohibited.

(4) Notwithstanding the foregoing and any other provision of law to the contrary, any borrower or debtor may contract for and agree to pay a finance charge which will result in a yield not to exceed the greater of ten percent (10%) per annum or five percent (5%) per annum above the index of market yields of the Monthly Twenty-Year Constant Maturity Index of Long-Term United States Government Bond Yields, as compiled by the United States Treasury Department, each calculated according to the actuarial method, on any loan, mortgage or advance which is secured by a lien on residential real property or by a lien on stock in a residential cooperative housing corporation where the loan, mortgage or advance is used to finance the acquisition of such stock. The term "residential real property," as used in this subsection, means real estate upon which there is located or to be located a structure or structures designed in whole or in part for residential use, or which comprises or includes one or more apartments, condominium units or other dwelling units.

(5) Notwithstanding the foregoing and any other provision of law to the contrary, any borrower or debtor may contract for and agree to pay and any lender or extender of credit may contract for and receive any finance charge agreed to in writing by the parties, notwithstanding that such charge is in excess of that otherwise allowed on any contract, credit sale, obligation or other extension of credit, regardless of the security taken or the purpose of the

extension of credit, under which the principal balance to be repaid originally exceeds Two Thousand Dollars ($2,000.00), or on any series of advances of money pursuant to a contract if the aggregate of sums advanced or originally proposed to be advanced exceeds Two Thousand Dollars ($2,000.00), or on any extension or renewal thereof; and as to any such agreement, the claim or defense of usury or violation of any law prescribing, limiting or regulating the rate of finance charge by any borrower or debtor, or his successors, guarantors, assigns or anyone on his behalf is prohibited.

(6) Notwithstanding the foregoing and any other provisions of law to the contrary, the outstanding balance of a prior loan or lease of a motor vehicle used as a trade-in, as well as other items that are capitalized or amortized during the lease term, may be included in a lease for a motor vehicle, provided that the rate of finance charge associated with the lease contract does not at any time exceed the finance charge limitations specified in Section 63-19-43.

SOURCES: Codes, Hutchinson's 1848, ch. 47, art. 7(2, 3); 1857, ch. 50, art. 1; 1871, § 2279; 1880, § 1141; 1892, § 2348; 1906, § 2678; Hemingway's 1917, § 2075; 1930, § 1946; 1942, § 36; Laws, 1912, ch. 229; Laws, 1966, ch. 317, § 1; Laws, 1972, ch. 436, § 1; Laws, 1973, ch. 387, § 1; Laws, 1974, ch. 564, § 1; Laws, 1980, ch. 492, § 1; Laws, 1982, ch 468, § 1; Laws, 1984, ch. 501, § 1; Laws, 1986, ch. 510, § 1; Laws, 1989, ch. 355, § 1; Laws, 1994, ch. 338, § 1; Laws, 1997, ch. 595, § 1; Laws, 1999, ch. 426, § 2; Laws, 2001, ch. 317, § 1, eff from and after July 1, 2001.

Editor's Note — Laws of 1980, ch. 492, effective May 13, 1980, § 1 of which amended this section, provides in §§ 6 and 7 as follows:

"SECTION 6. The provisions of this act shall apply only to contracts, agreements, or evidences of indebtedness entered into on or after the effective date of this act, and shall not defeat, extinguish or render void any claim or defense existing with respect to contracts, agreements or evidences of indebtedness entered into prior to the effective date of this act.

"SECTION 7. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of sections 501(a)(1), 511 and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections shall remain in full force and effect in the State of Mississippi."

Laws of 1982, ch. 468, effective April 20, 1982, § 1 of which amended this section, provides in § 6 as follows:

"SECTION 6. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511 and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections shall remain in full force and effect in the State of Mississippi."

Laws of 1984, ch. 501, § 6, effective July 1, 1984, provides as follows:

"SECTION 6. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Cross References — Motor vehicle finance charge limitations, see § 63-19-43.

Interest in negotiable instruments, see §§ 75-3-106, 75-3-118.

Secured transactions under Uniform Commercial Code, see §§ 75-9-201, 75-9-203.

Evasion of six percent interest law, see § 75-17-3.

Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

Loans by pawnbrokers, see § 75-67-1 et seq.

Interest and charges under small loan regulatory law, see § 75-67-119.

Federal Aspects — Provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, see 12 USCS §§ 1735f-7 note, 86a, 1831d, and 1785, respectively.

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I. Under Current Law.

A. In General.

There is no conflict between 1 USCS § 109, a federal savings statute, and retroactive application of § 75-17-1. Roper v. Consurve, Inc., 777 F. Supp. 508 (S.D. Miss. 1990), aff'd, 932 F.2d 965 (5th Cir. 1991), cert. denied, 502 U.S. 861, 112 S. Ct. 181, 116 L. Ed. 2d 142 (1991).

Where a note is payable with interest, insertion by the payee of the legal rate after its execution, does not vitiate it. Tate v. Rouse, 247 Miss. 545, 156 So. 2d 217 (1963).

The statute is highly penal and must be construed in favor of the creditor. Ready-Mix Concrete & Concrete Prods. Co. v. Perry, 239 Miss. 329, 123 So. 2d 241 (1960).

Compound interest ordinarily is chargeable in cases of fraud, gross negligence, or abuse of trust on the part of the guardian, but only simple interest will be charged in cases of simple neglect of duty without fraud or intentional misconduct. Jones v. Parker, 216 Miss. 64, 61 So. 2d 681 (1952).

This section is highly penal and must be strictly construed. Tower Underwriters v. Lott, 210 Miss. 389, 49 So. 2d 704 (1951).

2. Application to state or other political units.

In proceedings on a city's condemnation of a utility's assets, it was error to order the city to pay interest pursuant to Miss. Code Ann. § 75-17-1(1) because the applicable statute was Miss. Code Ann. § 75-17-7. City of Gulfport v. Dedeaux Util. Co., — So. 3d —, 2016 Miss. LEXIS 130 (Miss. Mar. 24, 2016).

Statute does not apply to municipal corporations or other political subdivisions of state. City of Indianola v. Gates, 181 Miss. 145, 179 So. 284 (1938).

In policeman's action against city for salary, court improperly allowed six percent interest on judgment. City of Natchez v. McGehee, 157 Miss. 225, 127 So. 902 (1930).

Statute does not apply to state or political subdivision. City of Natchez v. McGehee, 157 Miss. 225, 127 So. 902 (1930).

A county is not liable for interest on a claim against it in the absence of a contract therefor. Moore v. Tunica County, 143 Miss. 839, 108 So. 900 (1926).

The state insurance commissioner is liable for interest on his accounts with the state which he had failed to settle promptly. Miller v. Henry, 139 Miss. 651, 103 So. 203 (1925).

On the partial dissolution of an injunction by a county to restrain an ejectment suit for land procured by it through duress, attorney's fees and interest on rents may be decreed against the county which is not in such case exempt from liability by reason of its sovereignty. Allen v. Leflore County, 80 Miss. 298, 31 So. 815 (1902).

Orders on its treasurer in payment of work done in construction of levees issued by the board of levee inspectors of Issaquena County under the Act of 1850 are in their nature essentially county warrants and do not bear interest. Anderson v. Issaquena County, 75 Miss. 873, 23 So. 310 (1898).

Claims against a county do not bear interest. Board of Supvrs. v. Klein, 51 Miss. 807 (1876); Clay Co. v. Chickasaw Co., 64 Miss. 534, 1 So. 753 (1886).

3. Recovery of interest in particular cases—Delinquent taxes.

Interest is not recoverable on delinquent taxes since it was not allowed at common law, and the statutes of this state on the subject have relation only to debts existing on contract and by judgment. Illinois Cent. R.R. v. Adams, 78 Miss. 895, 29 So. 996 (1901).

4. —Amounts due to laborers, materialmen, or contractors.

Where appellee's recovery was based on an oral contract, he was not entitled to prejudgment interest because there was a bona fide dispute as to the amount of damages, and prejudgment interest was unavailable under Miss. Code Ann. §§ 75-17-1 or 87-7-3 where the damages were unliquidated. Falkner v. Stubbs, 121 So. 3d 899 (Miss. 2013).

An award of prejudgment interest to a contractor which prevailed on its claim against a subcontractor for overpayments on a government contract was improper, except as to that portion of damages which the subcontractor admitted it owed the contractor, where a legitimate dispute between the parties was evidenced by the subcontractor's pursuit of administrative and Court of Claims appeals on the contract, where the contractor acquiesced in the appeals, and where the subcontractor appeared to have pursued the appeals in good faith; on the facts, the delay in making repayment was not an exercise in bad faith or frivolity justifying an award of prejudgment interest. Glantz Contracting Co. v. General Elec. Co., 379 So. 2d 912 (Miss. 1980).

A welder suing the prime contractor on a highway construction project and its surety, for an amount due for labor and materials, was entitled to interest from the time the debt became due and payable, and could recover such interest from the prime contractor's surety, although the surety bond had no express provision for interest on such debt. Dixie Contractors v. Ballard, 249 So. 2d 653 (Miss. 1971).

Interest on sums due laborers and materialmen by contractor follows as necessary incident thereto. United States Fid. & Guar. Co. v. Parsons, 154 Miss. 587, 122 So. 544 (1929).

Interest on sums due laborers and materialmen follows as necessary incident, though bond does not provide therefor. Mississippi Fire Ins. Co. v. Evans, 153 Miss. 635, 120 So. 738 (1929).

Subcontractor held entitled to interest at six percent on balance due under contract from date of completion. Stowell v. Clark, 152 Miss. 32, 118 So. 370 (1928).

5. —Open accounts.

Where jury returned verdict for plaintiff on open account without mentioning interest, court could add interest. Collins v. Carter, 155 Miss. 600, 125 So. 89 (1929).

Plaintiff held entitled to interest on amount of account found due him from date of demand by filing of suit. Collins v. Carter, 155 Miss. 600, 125 So. 89 (1929).

Open accounts bear interest as a legal incident after maturity. J.H. Thompson v. Matthews, 56 Miss. 368 (1879).

6. —Other particular cases.

The interest rate on each of 203 oral agreements to extend a written promissory note was subject to the 8 percent limitation in § 75-17-1(1), since each agreement constituted a separate forbearance contract rather than merely an amendment to the original promissory note. Sunburst Bank v. Keith, 648 So. 2d 1147 (Miss. 1995).

A contract need not be in writing to qualify for the interest rate provided in Mississippi Code § 75-17-1(6), which governs revolving charge agreements. Allied Chem. Corp. v. Mackay, 695 F.2d 854 (5th Cir. 1983).

Although dealer, who was actively involved in consummating the challenged securities transactions, incurred no § 75-71-25 liability since he personally made no misrepresentation of material fact to buyer, such buyer, in a suit for rescission of sale of securities, could recover the full purchase price of the securities from the dealer, with interest from the date of payment under § 75-17-1, but attorney fees were not recoverable. Johnson v. Yerger, 612 F.2d 953 (5th Cir. 1980).

Under the statute, a shipper is entitled to interest on charges refunded. Mississippi Rice Growers Ass'n v. Illinois Cent. R.R., 295 F.2d 681 (5th Cir. 1961).

Where funds of mentally incompetent ward were commingled with those of guardian without any arrangement for borrowing such funds, estate of deceased guardian was chargeable with interest of six percent per annum on amounts received by guardian from time to time less expenditures made for maintenance of ward and in absence of fraud or intentional misconduct, the interest allowed should not be compounded. Jones v. Parker, 216 Miss. 64, 61 So. 2d 681 (1952).

In an action by a news association to recover the alleged balance due under a contract to furnish news reports to a radio station, plaintiff was entitled to legal interest from and after the date of the breach of contract by the radio station computed to the date of the decree. United Press Ass'ns v. McComb Broadcasting Corp., 201 Miss. 68, 28 So. 2d 575 (1947), error overruled, 201 Miss. 75, 30 So. 2d 511 (1947).

Measure of damages for breach of contract involving real or personal property includes legal interest from date of breach on amount of damages. C.B. Foster & Co. v. Fulton Bag & Cotton Mills, 159 Miss. 217, 131 So. 415 (1930).

Damages for injuries to or destruction of property does not bear interest under this section. Humphreys County v. Washington County, 128 Miss. 132, 90 So. 710 (1922).

Interest and purchase-money paid for land is not recoverable as damages for breach of warranty of title when the evicted grantee has been acquitted of all liability to the owner of the land for mesne profits without paying the same. The proportion between the amount of the interest and the value of the mesne profits is immaterial. British & Am. Mtg. Co. v. Todd, 84 Miss. 522, 36 So. 1040 (1904).

7. Date from which interest is computed.

Where the State deposited the funds for eminent domain proceeding, the landowners had the right to withdraw the funds from any point thereafter; therefore, from the date of deposit, the State no longer had control of the funds and had no obligation to pay interest on those funds. Gautier v. Miss. Transp. Comm'n, 839 So. 2d 588 (Miss. Ct. App. 2003).

Accrued interest upon ninety-day notes which had been renewed was properly calculated on basis of 360-day year. Cox v. Timlake, 169 Miss. 568, 153 So. 794 (1934).

Manufacturer, on buyer's breach of contract, is entitled to interest from date of breach on amount of damages determined by verdict. C.B. Foster & Co. v. Fulton Bag & Cotton Mills, 159 Miss. 217, 131 So. 415 (1930).

Guarantor held liable for six percent interest on guaranty from date of declaration, where no demand was made before. Ely & Walker Dry Goods Co. v. Powell, 155 Miss. 266, 124 So. 329 (1929).

Where interest for the year preceding maturity was included in a note, interest from its maturity only should be included in a decree for its conversion, and, no rate of interest being specified, the rate would be six per centum. Weaver v. Williams, 75 Miss. 945, 23 So. 649 (1898).

Where a note bears interest "after maturity," interest should be computed from the day fixed for payment and not from the expiration of the days of grace. Wheeless v. Williams & Daniels, 62 Miss. 369, 52 Am. R. 190 (1884).

A contract to pay interest from date unless otherwise stipulated, bears interest until the principal be paid. Meaders v. Gray, 60 Miss. 400, 45 Am. R. 414 (1882).

8. Prejudgment interest.

While plaintiff contractor was entitled to pre-judgment interest against defendant lessor of renovated property on amounts due under a settlement agreement that had been reached between the contractor, the lessor, and defendant lessee, the contractor did not seek to enforce the settlement agreement for nearly one year after it was breached, and for nearly five months after it filed its lawsuit against defendants, thus, the contractor, as a matter of equity, was not awarded prejudgment interest during the time period it delayed in seeking to enforce the settlement agreement. The Stellar Group v. Pilgrim's Pride Corp., 2007 U.S. Dist. LEXIS 85242, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 85242 (S.D. Miss. Nov. 13, 2007).

In a suit involving the collection of an open account, prejudgment interest was properly awarded where the trial court found that there was a liquidated amount of debt; moreover, the specific request for an amount of such in the pleadings was sufficient to put a creditor on notice of such. Gulf City Seafoods, Inc. v. Oriental Foods, Inc., 986 So. 2d 974 (Miss. Ct. App. 2007), writ of certiorari denied by 987 So. 2d 451, 2008 Miss. LEXIS 341 (Miss. 2008).

In a contract dispute regarding damage caused to equipment owned by a utilities commission, a trial judge did not err by awarding prejudgment interest under Miss. Code Ann. § 75-17-7; the argument that Miss. Code Ann. § 75-17-1 applied was rejected. Upchurch Plumbing, Inc. v. Greenwood Utils. Comm'n, 964 So. 2d 1100 (Miss. 2007).

When a utilities commission sued a contractor for damaging the commission's equipment in the process of testing a defective control system the contractor installed, the calculation of prejudgment interest the commission was awarded was controlled by Miss. Code Ann. § 75-17-7, instead of Miss. Code Ann. § 75-17-1(1) because it was apparent that § 75-17-1(1) allowed trial judges to award prejudgment interest only where a contract in issue specifically allowed it, but nothing in the statute said prejudgment interest could only be awarded where a contract provided for it. Upchurch Plumbing, Inc. v. Greenwood Utils. Comm'n, — So. 2d —, 2007 Miss. LEXIS 225 (Miss. Apr. 19, 2007), opinion withdrawn by, substituted opinion at 964 So. 2d 1100, 2007 Miss. LEXIS 495 (Miss. 2007).

In a condemnation proceeding, the trial court erred when it compounded the interest and made a distinction between pre- and post-judgment interest because the eminent domain statutory scheme provided a specific provision for interest in Miss. Code Ann. § 11-27-19, and eminent domain judgments were not based on notes, accounts, sales or contracts; therefore, Miss. Code Ann. § 75-17-1(1) and Miss. Code Ann. § 75-17-7 did not apply to eminent domain judgments, and also "legal interest" was simple interest, not compounded interest. Dedeaux Util. Co. v. City of Gulfport, 938 So. 2d 838 (Miss. 2006), remanded by 63 So. 3d 514, 2011 Miss. LEXIS 191 (Miss. 2011).

A bank failed to demonstrate any abuse of discretion in a trial judge's decision to award prejudgment interest to a debtor who was charged a usurious interest rate on 203 forbearance agreements extending written promissory notes where the judge computed the prejudgment interest based on unequivocal data jointly supplied by the debtor and the bank which furnished the payment history of all the notes. Sunburst Bank v. Keith, 648 So. 2d 1147 (Miss. 1995).

A contract provision stating that "the unpaid balance shall bear interest monthly at the rate of twelve percent per annum or the maximum contract rate permitted by the applicable usury laws ... whichever is the lesser," unambiguously and as a matter of law called for compound interest, inasmuch as prejudgment interest under § 75-17-1(1) is computed at a specified rate, compounded annually. Exxon Corp. v. Crosby-Mississippi Resources, Ltd., 40 F.3d 1474 (5th Cir. 1995).

Back-dating of notes and assumption of debt of insolvent debtor by new debtor did not violate usury statute where party challenging loan had opportunities to correct dates on notes and no action on part of other party appeared to be oppressive. OMP v. Security Pac. Bus. Fin., Inc., 716 F. Supp. 239 (N.D. Miss. 1988).

Statute setting out legal rate of interest (§ 75-17-1) does not provide for prejudgment interest in wrongful death action on estimated earnings from time of decedent's death to time of trial. Smith v. Industrial Constructors, Inc., 783 F.2d 1249 (5th Cir. 1986).

Under Mississippi Code Annotated § 75-17-1, it is not provided that wrongful death statute allows prejudgment interest, since this statute only sets out legal rate of interest in Mississippi. Smith v. Industrial Constructors, Inc., 783 F.2d 1249 (5th Cir. 1986).

Failure of plaintiff to plead or demand interest on his claim against an insurance company until after the jury verdict and judgment were entered waived any rights he might have had, under this section, to prejudgment interest. McLaurin v. Old S. Life Ins. Co., 334 So. 2d 361 (Miss. 1976).

B. Usury.

9. In general.

Chancellor did not err in finding that a finance charge was usurious under Miss. Code Ann. § 75-17-1(4) (2009) as the parties contracted for, in writing, a nineteen percent interest rate where the original principal balance to be repaid exceeded $ 2000; thus, pursuant to § 75-17-1(5), the finance charge was lawful. Miller v. Parker McCurley Props., L.L.C., 36 So. 3d 1234 (Miss. 2010).

Usury is not a crime under state law; limit on interest rate is enforceable only by civil remedy. State v. Roderick, 704 So. 2d 49 (Miss. 1997), reh'g denied, 703 So. 2d 863 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694 (1998).

State RICO Act does not set out level of intent required for prosecution of usury as collection of unlawful debt and, thus, RICO would omit essential element of crime and would be too vague to satisfy due process; although RICO is general intent crime that takes its intent from underlying crimes, level of intent for usury is defined by civil statute and would not apply to criminal prosecution. State v. Roderick, 704 So. 2d 49 (Miss. 1997), reh'g denied, 703 So. 2d 863 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694 (1998).

Evidence that State Attorney General's office encouraged check cashers' association to lobby Legislature for regulation of their industry supported determination that State did not give check cashing businesses adequate notice that usury could be prosecuted under State RICO Act and, thus, that RICO was unconstitutionally vague as applied to check cashers; contact between check cashers and Attorney General's office led check cashers to believe that their business was legal. State v. Roderick, 704 So. 2d 49 (Miss. 1997), reh'g denied, 703 So. 2d 863 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694 (1998).

All crimes used as bases for State RICO Act prosecution are outlined in RICO Act, and there are cross-references between RICO and underlying criminal statutes, and, therefore, application of RICO to usury would violate due process for lack of notice that usury is prosecutable offense; no reference to RICO is made in usury statute or other statutes on interest and finance charges, and person of ordinary intelligence would not be given fair warning that usury is prosecutable offense. State v. Roderick, 704 So. 2d 49 (Miss. 1997), reh'g denied, 703 So. 2d 863 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694 (1998).

Usury is not criminal under State law and, thus, application of State's RICO Act to usury would criminalize activity without fair notice and definite warning of prohibited conduct and would violate due process. State v. Roderick, 704 So. 2d 49 (Miss. 1997), reh'g denied, 703 So. 2d 863 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694 (1998).

The responsibility for complying with the usury law falls upon the lender, not the borrower. It is the creditor, not the debtor, who commits an illegal act upon entering a usurious contract. Only the lender can possess the intent to "exact," and therefore the liability for usury violations falls upon the lender and not the borrower. Thus, a borrower did not break the law when he agreed to repay the lender at a rate of interest exceeding that allowed by § 75-17-1. Watkins v. Mississippi Bar, 589 So. 2d 660 (Miss. 1991).

Inasmuch as usury statute is highly penal in nature, it must be strictly construed in favor of creditor. Roper v. Consurve, Inc., 777 F. Supp. 508 (S.D. Miss. 1990), aff'd, 932 F.2d 965 (5th Cir. 1991), cert. denied, 502 U.S. 861, 112 S. Ct. 181, 116 L. Ed. 2d 142 (1991).

Retroactive application of 1974 amendments to usury statute, and application of most favored lender doctrine pursuant to retroactive statute, entitled defendant banks to lawfully charge maximum interest rate of one ½% per month on unpaid credit card balances. Roper v. Consurve, Inc., 777 F. Supp. 508 (S.D. Miss. 1990), aff'd, 932 F.2d 965 (5th Cir. 1991), cert. denied, 502 U.S. 861, 112 S. Ct. 181, 116 L. Ed. 2d 142 (1991).

To entitle one to recover back payments under the statute, proof of usury must be clear, positive, and certain. Ready-Mix Concrete & Concrete Prods. Co. v. Perry, 239 Miss. 329, 123 So. 2d 241 (1960).

The usury statute is highly penal and will be strictly construed against the party asserting usury, and the burden is upon such a person to prove the existence of usury by clear, positive and certain proof. Ranson v. Snyder, 222 Miss. 248, 75 So. 2d 738 (1954).

This section must be strictly construed, as a highly penal statute against the debtor who claims that usury has been charged, instead of against the creditor. Yeager v. Ainsworth, 202 Miss. 747, 32 So. 2d 548 (1947).

Where one brings suit under this section for usury, its provisions are to be strictly construed against the party seeking to invoke it and the proof of usury must be clear, positive and certain. Yeager v. Ainsworth, 202 Miss. 747, 32 So. 2d 548 (1947).

Second mortgagee's contract, if usurious because providing for interest over eight percent, but under twenty percent, nevertheless remained valid charge against property to extent of principal indebtedness. Great S. Land Co. v. Valley Sec. Co., 162 Miss. 120, 137 So. 510, 82 A.L.R. 405 (1931).

The law which provides for a forfeiture of both principal and interest where more than twenty percent per annum is charged is highly penal and a strict construction is required. Morgan v. King, 128 Miss. 401, 91 So. 30 (1922).

Statute can be invoked by a borrower only where it is certain that usurious interest was either contracted for or received. Byrd v. Link-Newcomb Mill & Lumber Co., 118 Miss. 179, 79 So. 100 (1918).

This section does not penalize the creditor merely for demanding greater rate of interest than eight percent where such interest was not provided for in the contract. Doyle v. L. Herzog & Bros. Dry Goods Co., 115 Miss. 154, 75 So. 760 (1917).

Intentional preference of a usurious debt makes a voluntary assignment void. Hiller v. Ellis, 72 Miss. 701, 18 So. 95 (1895).

Preference of a debt embracing usury does not render an assignment for creditors invalid if the amount directed to be paid does not exceed the principal due and legal interest. H. Wetler Mfg. Co. v. Dinkins, 70 Miss. 835, 12 So. 584 (1893).

In the absence of a statute expressly providing a different rule, the penalty on a corporation for usury is the same as that imposed on natural persons. Grand Gulf Bank v. Archer, 16 Miss. (8 S. & M.) 151 (1847).

10. Law governing, as to usury.

In a contract dispute, sellers of property were properly awarded an interest rate of eight percent under Miss. Code Ann. § 75-17-1(1) where the contract provided that interest was paid at the highest lawful rate then in effect; although the sellers could have contracted for 15 percent under § 75-17-1(3), the rate was not specified. Dunlap Acres, Ltd. v. Intervest Dev. Corp., 955 So. 2d 345 (Miss. Ct. App. 2006), writ of certiorari denied by 956 So. 2d 228, 2007 Miss. LEXIS 239 (Miss. 2007).

Back-dating of notes and assumption of debt of insolvent debtor by new debtor did not violate usury statute where party challenging loan had opportunities to correct dates on notes and no action on part of other party appeared to be oppressive. OMP v. Security Pac. Bus. Fin., Inc., 716 F. Supp. 239 (N.D. Miss. 1988).

Where a usury law was modified so as to permit a service charge by banks on small loans, which under the previous law would have constituted usury giving right to an action by the borrower to recover not only the interest paid but the principal as well, loss of the right of action by reason of such modification where the former act did not denounce usurious transactions as void, did not amount to the impairment of the obligation of the contract, since modification simply withdrew previous impediments and rendered contract enforceable as made. Deposit Guar. Bank & Trust Co. v. Williams, 193 Miss. 432, 9 So. 2d 638 (1942).

Statute providing for recovery of usurious interest and statute providing that rate of interest should not be construed as increased by stipulation for payment of interest in period less than one year must be construed in pari materia in connection with provision of Code that repeal of statutory provisions thereby should not affect cause of action nor right accruing prior to effective date of repeal. Jefferson Std. Life Ins. Co. v. Dorsey, 178 Miss. 852, 173 So. 669 (1937).

As respects retroactive operation of statute providing that rate of interest should not be construed as increased by stipulation for payment in period of less than one year, statute authorizing recovery of usurious interest creates right arising from contract and not right to recover "penalty." Jefferson Std. Life Ins. Co. v. Dorsey, 178 Miss. 852, 173 So. 669 (1937).

Statute providing that rate of interest specified by contract shall not be construed as increased by stipulation for payment of interest at periods less than one year held prospective in operation and not retroactive, and hence would not affect right to recover interest payments accruing prior to adoption thereof. Jefferson Std. Life Ins. Co. v. Dorsey, 178 Miss. 852, 173 So. 669 (1937).

When according to the real intention of the parties a loan made by a corporation of another state to a citizen of, and secured by mortgage on lands in this state, is to be paid here, the usury laws of this state are applicable thereto, although the contract contains a provision for payment in another state whose laws are dissimilar. Georgia State Bldg. & Loan Ass'n v. Shannon, 80 Miss. 642, 31 So. 900 (1902).

When according to the real intentions of the parties as disclosed by the several features of the contract, payment was to be made in this state, the usury laws of this state are applicable thereto although the contract contains a provision for payment in another state having dissimilar laws. Shannon v. Georgia State Bldg. & Loan Ass'n, 78 Miss. 955, 30 So. 51, 84 Am. St. R. 657 (1901).

Notwithstanding the statutes of Tennessee provide that interest in excess of six percent per annum is usurious and make the exacting of usury a criminal offense, yet a note made and payable in that state bearing eight percent per annum on its face, secured by a lien on the lands in this state, where such a rate is legal, will be enforced here. Kendrick v. Kyle, 78 Miss. 278, 28 So. 951 (1900).

Comity does not require one state or nation to enforce the criminal statutes of another. Kendrick v. Kyle, 78 Miss. 278, 28 So. 951 (1900).

Comity did not require that nonresident building and loan associations be allowed the exemptions from the usury laws given by the former corresponding section (§ 2348, Code 1892), to like associations "domiciled in this state." Sokoloski v. New S. Bldg. & Loan Ass'n, 77 Miss. 155, 26 So. 361 (1899).

A law of its domicil authorizing a nonresident building and loan association to charge a fixed premium per month upon a loan is not operative here against our usury laws. Sokoloski v. New S. Bldg. & Loan Ass'n, 77 Miss. 155, 26 So. 361 (1899).

The execution of a mortgage on lands in another state to secure a loan made in this state does not make the contract one to be governed by the interest laws of such other state. Commercial Bank v. Auze, 74 Miss. 609, 21 So. 754 (1897).

The laws of this state and access to its courts cannot be the subject of contract; if a contract for the loan of money be usurious under the laws of another state by which it is governed, the courts of this state will not respect a stipulation therein that in case of litigation it shall be governed by the laws of this state, and this although the loan be secured by mortgage on land here. American Freehold Land & Mtg. Co. v. Jefferson, 69 Miss. 770, 12 So. 464, 30 Am. St. R. 587 (1892).

Where our courts of equity are appealed to by a debtor seeking relief against a usurious contract which is governed by the laws of another state, they will apply the general doctrine of equity regardless of the terms of the contract or of our statutes as to usury and will require that the complainant do equity by refunding or tendering in his bill the principal of the debt with legal interest. American Freehold Land & Mtg. Co. v. Jefferson, 69 Miss. 770, 12 So. 464, 30 Am. St. R. 587 (1892).

11. Intent or knowledge; ignorance of law.

A trial court did not err in finding that a bank charged a debtor a usurious rate of interest on 203 forbearance agreements to extend written promissory notes, in spite of the bank's contention that the act of charging a usurious rate of interest was a result of a mistake or misapprehension and was exacted without any intent to receive a usurious rate of interest, where the bank computed the interest on the forbearance agreements by dividing the number of months in the term of each note into the total pre-calculated interest over the entire term of the note without a single miscalculation, and the bank admitted that there was a conscious, deliberate intention on its part to charge the debtor in each incident what it did in fact charge him. Sunburst Bank v. Keith, 648 So. 2d 1147 (Miss. 1995).

Amounts claimed to be usurious interest which consisted in large part of errors, inadvertences, miscalculations and bona fide contentions over disputed items involving many transactions over a number of years did not constitute usury. Patterson v. J.W. McClintock, Inc., 201 Miss. 107, 28 So. 2d 737 (1947).

To constitute usury, there must be an intent to commit the act which results in the exaction of a usurious charge, and when such act is the result of mistake or misapprehension, this necessary element is lacking. Jones v. Hernando Bank, 194 Miss. 474, 13 So. 2d 31 (1943).

A mistake of fact purges the transaction of usury, whereas a mistake as to the legal effect of a purposeful act is a mistake of law and the actor is bound by the result. Jones v. Hernando Bank, 194 Miss. 474, 13 So. 2d 31 (1943).

Good faith and absence of unlawful intention are no defense to the application of the statute. Dickey v. Bank of Clarksdale, 183 Miss. 748, 184 So. 314 (1938).

Where mortgagors and mortgagee knew that interest on loan exceeded eight percent per annum, whether parties knew interest was usurious held immaterial, since error or mistake, to be excusable, must be one of fact and not of law. Jefferson Std. Life Ins. Co. v. Davis, 173 Miss. 854, 163 So. 506 (1935).

Ignorance of the law is no legal excuse and does not prevent the recovery of the usurious interest. Hebron Bank v. Gambrell, 116 Miss. 343, 77 So. 148 (1918).

Where a bank, in calculating interest, without the sanction of its directors used tables reckoning three hundred and sixty days to the year and uniformly used by banks, and there was no intention to violate the law, there was no usury, since to constitute usury, there must be an intention to violate the statute. Planters' Bank v. Snodgrass, 5 Miss. (4 Howard) 573 (1840).

12. Additional charges permissible; collection fees.

A resident corporation may lawfully charge and collect a brokerage or service fee from the borrower for placing a loan for him with a nonresident corporation and for guaranteeing the payment of such loan. Tower Underwriters v. Lott, 210 Miss. 389, 49 So. 2d 704 (1951).

Provision for interest, with collection costs, including attorney's fee, held not absolute promise to pay attorney's fee as affecting usurious nature. A.W. Tedcastle Co. v. Garfinkel, 148 Miss. 507, 114 So. 326 (1927).

A contract to pay ten percent additional on principal and interest if the note is placed in the hands of an attorney for collection is not itself a usurious provision. Burt v. Brashears, 118 Miss. 339, 79 So. 182 (1918).

13. Construction of contracts as to usury, in general.

An agreement for the sale of fertilizer to a farmer was a "revolving charge agreement" within the meaning of Miss Code § 75-17-1(6), where the purchase price financed was to be paid within 30 days without interest, but if credit was required for any part of the balance beyond that time, the rate of interest was fixed at 1.5 percent per month. Furthermore, although the agreement was usurious to the extent the 1.5 percent per month was charged on the amount exceeding $800, it was not usurious as to mandate forfeiture of the principal obligation under § 75-17-1. Allied Chem. Corp. v. Mackay, 695 F.2d 854 (5th Cir. 1983).

The court in determining the question whether persons are actually engaged in lending money at usurious rates of interest has a right to look through the forms which the transactions were made to assume and to base its decision upon the real facts. Alt v. Bailey, 211 Miss. 547, 52 So. 2d 283 (1951).

In cases involving the question of whether usury has been contracted for or received, it is permissible to introduce parol testimony to show that the written contract does not in fact represent the real agreement between the parties thereto on the issue of whether the sums mentioned therein include interest in excess of the rate allowed by law. Yeager v. Ainsworth, 202 Miss. 747, 32 So. 2d 548 (1947).

In usury cases the question involved is whether or not a payment of interest is contracted for or received, in accordance with the intention of the parties, in excess of the maximum rate provided for by law, and in such manner as to evade the law against usury and for that purpose. Yeager v. Ainsworth, 202 Miss. 747, 32 So. 2d 548 (1947).

Contract for usurious interest is violative of public policy of State, and courts, in order to ascertain whether contract is usurious, will look through form to substance, and real facts will control. Kennedy v. Porter, 176 Miss. 742, 170 So. 286 (1936).

Usury is determined by what the creditor has the right according to the terms of the contract if enforced, to demand in any situation during its life and not by what he may ask under an accidental situation. Crafton v. New S. Bldg. & Loan Ass'n, 77 Miss. 166, 26 So. 362 (1899).

Recitals in a contract on the subject of interest are not conclusive on the question of usury. Parchman v. McKinney, 20 Miss. (12 S. & M.) 631 (1849).

14. Transactions as usurious.

Even if check cashing service was involved in discounting negotiable instruments, rather than in making loans, civil usury statute's 8% allowable interest rate would be applicable. State v. Roderick, 704 So. 2d 49 (Miss. 1997), reh'g denied, 703 So. 2d 863 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694 (1998).

When negotiable instrument is purchased at discount, discount is limited to 8% interest limit set by civil usury statute. State v. Roderick, 704 So. 2d 49 (Miss. 1997), reh'g denied, 703 So. 2d 863 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694 (1998).

That one lending money on interest to enable another to carry on a business, materials for which were to be purchased from him, also made a profit on such materials furnished on credit does not render the transaction usurious. Ready-Mix Concrete & Concrete Prods. Co. v. Perry, 239 Miss. 329, 123 So. 2d 241 (1960).

The fact that the maker and the payee did not contract or stipulate for greater rate of interest than 20 percent does not prevent the note from being usurious if the payee received directly or indirectly a greater sum of interest than 20 percent per annum. Cortner v. Bennett, 230 Miss. 369, 92 So. 2d 559 (1957).

In an action seeking recovery for the balance due upon a promissory note, wherein the maker counterclaimed for the amount of payments made upon the note alleging that he had signed the note in blank and received $500.00 and that the payee, without his knowledge, had filled in the note for the amount of $600.00, and the alleged charge of $100.00 plus four percent interest was usurious, judgment on the jury's verdict for the maker in an amount equal to the sum that he had paid upon the note plus six percent interest from the date of payment was affirmed. Cortner v. Bennett, 230 Miss. 369, 92 So. 2d 559 (1957).

Addition to the principal amount of a note of a reasonable amount to compensate the attorney-payee for examination of the title to land securing the indebtedness, done by agreement of the parties, was not considered as interest hidden by a device to circumvent the usury statutes. Johnson v. Carter, 203 Miss. 38, 33 So. 2d 296 (1948).

Where plaintiff's indebtedness to defendant bank, evidenced by original notes of $7400 and $2600 with interest at 8 percent per annum which had been reduced by payment, was to be scaled down to $2350 with interest thereafter at 6 percent, pursuant to an agreement under which a federal land bank granted plaintiff's application for a loan, but defendant bank took a new note for $2800 at 8 percent, the transaction was not tainted with usury within the purview of this section, in view of evidence showing error or misapprehension explaining defendant bank's failure to recast the indebtedness pursuant to the intent of the agreement. Jones v. Hernando Bank, 194 Miss. 474, 13 So. 2d 31 (1943).

The rule that to constitute usury it is essential that the principal sum shall be repayable at all events, and that it is not usurious if repayable only on some contingency, is not applicable as to short term loans not repayable in case of the borrower's death, where the lender makes a charge to enable him to take out insurance to guarantee repayment of the debt. Fry v. Layton, 191 Miss. 17, 2 So. 2d 561, 134 A.L.R. 1330 (1941).

The collection of eight percent interest per annum on a promissory note, calculated on the basis of the year being 360 days plus 5 days, was not usurious. Dickey v. Bank of Clarksdale, 183 Miss. 748, 184 So. 314 (1938).

Mere book entry where no money was received by creditor did not forfeit all interest. Howell v. Ott, 182 Miss. 252, 180 So. 52 (1938), error overruled, 182 Miss. 286, 181 So. 740 (1938).

In order to "receive" excessive interests, there must be a passage of interest from one person to another; mere book entry not being contemplated by statute unless accepted and agreed upon. Howell v. Ott, 182 Miss. 252, 180 So. 52 (1938), error overruled, 182 Miss. 286, 181 So. 740 (1938).

Mere intention to charge more than eight percent, without a stipulation or receipt, does not violate statute. Howell v. Ott, 182 Miss. 252, 180 So. 52 (1938), error overruled, 182 Miss. 286, 181 So. 740 (1938).

Loan contract for $2,500 evidenced by note for $1,312.50 as principal payable ten years after date and nineteen notes for $62.50 payable semiannually for ten-year period, and interest notes representing eight percent interest on principal of indebtedness, payable semiannually, held usurious. Jefferson Std. Life Ins. Co. v. Davis, 173 Miss. 854, 163 So. 506 (1935).

A loan is usurious where more than eight percent interest is stipulated for, though interest actually paid is within legal rate. Chandler v. Cooke, 163 Miss. 147, 137 So. 496 (1931).

A note payable in less than one year and stipulating for "10 percent straight until paid" is usurious. Burt v. Brashears, 118 Miss. 339, 79 So. 182 (1918).

A contract, by which a party was to advance a sum of money to enable another to purchase the assets of a defunct bank, and in consideration was to receive repayment of the amount of the loan from the assets purchased, and the payment of a like amount from the profits, imposed no personal liability on the borrower, and was not usurious. Commercial Bank & Trust Co. v. Joiner, 114 Miss. 749, 75 So. 599 (1917).

Where the highest legal rate of interest is added in the face of the note which provided for interest on this amount at such highest legal rate per annum from maturity held not to be usurious. Merchants' & Planters' Bank v. Caston, 97 Miss. 309, 52 So. 633 (1910).

A contract by which complainant is to advance money to publish and introduce defendant's book and in consideration thereof is to be paid his advances and his legal interest out of the net profits, if any, and also one-half of such profits, imposes no personal liability on defendant and is not usurious. Duval v. Neal, 70 Miss. 288, 12 So. 145 (1892).

An inadvertent overcharge of interest does not render the contract usurious. Smythe v. Allen, 67 Miss. 146, 6 So. 627 (1889).

A loan for the full legal rate of interest is not rendered usurious by the fact that the borrower pays to another money for negotiating the loan. Pass v. New England Mtg. Sec. Co., 66 Miss. 365, 6 So. 239 (1889).

A stipulation for a greater rate of interest than allowed whenever and however made is usurious. Union Nat'l Bank v. Fraser, 63 Miss. 231 (1885); Warmack v. Boyd, 63 Miss. 488 (1886); Rozelle v. Dickerson, 63 Miss. 538 (1886).

A stipulation in a contract that if the debt be not punctually paid at maturity the debtor shall pay interest from date is not usurious. Rogers v. Sample, 33 Miss. 310, 69 Am. Dec. 349 (1857).

Where a note is given for the face value of depreciated stocks with interest and the interest thereon is greater than the legal rate on their real value, it is usurious. Grand Gulf Bank v. Archer, 16 Miss. (8 S. & M.) 151 (1847); Bondurant v. Commercial Bank of Natchez, 16 Miss. (8 S. & M.) 533 (1847); Cook v. Bank of Lexington, 16 Miss. (8 S. & M.) 543 (1847).

To constitute usury there must be an agreement between the lender and the borrower of money by which the borrower knowingly gives or promises and the lender knowingly takes or reserves, a higher rate of interest than the law allows and with an intention to violate the statute. Planters' Bank v. Snodgrass, 5 Miss. (4 Howard) 573 (1840).

15. —Devices to avoid usury provisions.

Maximum 10 percent yield as provided for in this section would apply retroactively, and all charges to the debtor for receiving a loan would be considered in determining whether the total finance charge was usurious. Thus, where a lender had "stipulated for" interest of 7 percent per annum for five years and for a discount or finance charge, the total of which constituted 10.35 percent interest on the loan, the lender had not only "received" but had also "stipulated for" usurious interest; the lender was entitled to the return of principal only and the debtor was entitled to recover all monies paid in excess of principal. Cappaert v. Bierman, 339 So. 2d 1355 (Miss. 1976).

The courts will look to and construe a transaction by its substance and effect rather than its form, and will permit no scheme or device, however ingenuous, to hide the face of usury. Richardson v. Cortner, 232 Miss. 885, 100 So. 2d 854 (1958); Ready-Mix Concrete & Concrete Prods. Co. v. Perry, 239 Miss. 329, 123 So. 2d 241 (1960).

Where a loan service company purported to make arrangements for a borrower to borrow money from another firm, but the other firm did not actually loan money on the borrower's credit but on the unconditional indorsement of the loan by the service company, the loan service company was not a broker, but the lender; and the arrangement between the loan company and the other firm, which made available funds needed by the former to lend to its customers, was a subterfuge to circumvent the usury laws, so that a "brokerage" fee of $13 on a loan of $25 was in fact interest, and usurious. Richardson v. Cortner, 232 Miss. 885, 100 So. 2d 854 (1958).

The supreme court will look through the form of the substance of the transaction to determine whether usury has been charged or collected. Bell v. Tindall, 215 Miss. 343, 60 So. 2d 801 (1952).

Loans made to a borrower ostensibly by a nonresident corporation through the office of a resident corporation as evidenced by installment notes, payable to such nonresident corporation and guaranteed as to payment by the resident corporation, in amounts which, in addition to interest, included service or brokerage fees, which, as therein provided, were to be paid to the resident corporation, were not usurious so as to entitle the borrower to recover the principal and interest, notwithstanding that the amounts of the notes insofar as they exceeded the amounts actually received by the borrower were in excess of the maximum rate of interest provided for in this section, where the borrower in the notes he signed and in his receipts for the money received, which he admittedly read, acknowledged the resident corporation as his agent and broker, and could see from such papers that he was borrowing from, and agreeing to repay, the nonresident corporation, and that the resident corporation as his agent was to receive a part of the amounts of the notes as compensation for insurance and services rendered, which included guaranteeing payment of the notes. Tower Underwriters v. Lott, 210 Miss. 389, 49 So. 2d 704 (1951).

That a nonresident corporation has been able to work out a scheme whereby it may place loans to an enormous amount in this state and collect exorbitant charges on the money advanced as fees by it to the agent and broker of the borrower, and successfully claim that is is not doing business in this state or violating its usury laws, since it has no office, place of business or agents or employees in this state, has not qualified to do business under the laws of this state, and admittedly receives no part of the fees collected by the agent and broker of the borrower, is a problem for the legislature, and not for the courts in the absence of clear, positive and certain proof that more interest is received as such than is allowed under this section. Tower Underwriters v. Lott, 210 Miss. 389, 49 So. 2d 704 (1951).

Stipulation for payment of additional interest on past due note, held attempt to avoid usury statute and contract for usury. Hardin v. Grenada Bank, 182 Miss. 689, 180 So. 805 (1938).

Devices to defeat usury statute are not tolerated where consummation of usury is really intended; Notes will be held usurious although excess over eight percent is not actually collected. Hardin v. Grenada Bank, 182 Miss. 689, 180 So. 805 (1938).

An agreement that a debtor shall forward a certain amount of cotton to his creditor or pay commissions on it with no expectation on either side that the cotton should be forwarded but intended as a device to enable the creditor to obtain a usurious rate of interest, is void. Brown v. West, 80 Miss. 764, 32 So. 52 (1902).

16. —Prepayment of interest; interest on future advances.

A loan in which the interest was discounted in advance and in which the borrower was required to procure fire insurance to retire the indebtedness if the security was destroyed was not a usurious contract, even though the requirement acknowledged and demanded payment before maturity, since such requirement lacked the contractual specificity necessary to bring it within the scope of this section. The loan would not be usurious if the contingency for which the insurance was obtained did not occur, and if it did occur, whether or not it was usurious would depend upon the time of the occurrence. Thus, the contract was too indefinite for the imposition of a penal statute requiring forfeiture, even though the sum demanded in satisfaction of the loan appeared excessive. Jackson Inv. Co. v. Bates, 366 So. 2d 225 (Miss. 1978).

A contract to pay the maximum rate of interest allowed by law, calculated from the date of the contract, where the consideration therefor is to be advanced later during its life, if and when needed, violates the usury statute since interest begins to run on each advance of the consideration from its date. Taylor v. Copeland, 183 Miss. 85, 181 So. 742 (1938), error overruled, 183 Miss. 90, 183 So. 519 (1938).

Landlord held not entitled to collect eight percent interest on note by tenant on all furnished items regardless of when they were advanced. Taylor v. Copeland, 183 Miss. 85, 181 So. 742 (1938), error overruled, 183 Miss. 90, 183 So. 519 (1938).

Where defendant discounted notes for advances agreed to be made and placed the amount to the credit of the maker of the notes, and after making such advances charged ten percent interest on them, the dealings became usurious. O.B. Crittenden & Co. v. Ragan, 89 Miss. 185, 42 So. 281 (1906).

When interest is charged on a mere promise to lend money in the future and is carried into the loan afterward made and the borrower is in addition charged the highest legal interest on the money from the time advanced, the transaction is usurious and the whole interest forfeited and if paid the debtor may recover it by suit. Hiller v. Ellis, 72 Miss. 701, 18 So. 95 (1895).

Reserving in advance out of the loan interest at the highest legal rate is usurious. Hiller v. Ellis, 72 Miss. 701, 18 So. 95 (1895).

A charge of interest at the rate of ten percent discount was in violation of the former statute (§ 1141, Code 1880), disallowing as usurious all charges of interest in excess of ten percent. Columbus Ins. & Banking Co. v. First Nat'l Bank, 73 Miss. 96, 15 So. 138 (1894).

Prepayment of the full legal rate of interest when the loan is made renders it usurious. Hyde v. Finley, 26 Miss. 468 (1853); Polkinghorne v. Hendricks, 61 Miss. 366 (1883).

17. —Additional price of payment deferred.

In an action to enforce claims that defendant debtors had breached two retail installment contracts that had been assigned to plaintiff credit company, the defense of usury could not be asserted against plaintiff where it was a holder in due course; further, even if such defense could be asserted, the time-price doctrine took the transactions at issue outside the scope of this section. AgriStor Credit Corp. v. Lewellen, 472 F. Supp. 46 (N.D. Miss. 1979).

Where an automobile was sold on credit, the mere fact that the difference between the credit price and the cash price exceeded the percentage permitted by the usury laws did not render the transaction usurious, if the parties had acted in good faith. Bryant v. Securities Inv. Co., 233 Miss. 740, 102 So. 2d 701 (1958).

The sale of an automobile at a time or credit price, at the election of a purchaser, which price is in excess of the seller's cash price, is not violative of the law against usury, even though the difference, if considered as interest, amounts to more than the rate of interest allowed by law. Yeager v. Ainsworth, 202 Miss. 747, 32 So. 2d 548 (1947).

Under unimpeached evidence that the vendees signed a conditional sales contract for the purchase of an automobile which specifically set forth a cash price and a time price, the latter including finance, insurance and recording charges, the charge of a sum in excess of the cash price as part of the time or credit price did not constitute a charge of interest in violation of this section. Yeager v. Ainsworth, 202 Miss. 747, 32 So. 2d 548 (1947).

Where the parties to a contract for the sale of fertilizer were deemed to have agreed that the buyer would pay the cash price if he paid it before a certain date and in default thereof that he would pay the credit price of approximately ten percent additional, the transaction was not usurious, since no interest was involved but only a credit price. Crabb v. Comer, 190 Miss. 289, 200 So. 133 (1941).

Usury is not involved in credit sales because of difference between cash and credit prices. Commercial Credit Co. v. Shelton, 139 Miss. 132, 104 So. 75 (1925).

This section [Code 1942, § 36] is not violated by a water company, which under its rule requires a customer to pay ten percent additional on the water bill, where customer does not pay it promptly. Ford v. Vicksburg Waterworks Co., 102 Miss. 717, 59 So. 880 (1912).

A contract for the sale of goods to be paid for in thirty days at a certain price, is not usurious because of an agreement at the time of sale that if payment be not made within thirty days the price shall be fifteen per centum additional. Bass v. Patterson, 68 Miss. 310, 8 So. 849, 24 Am. St. R. 279 (1891).

18. —Defaulted interest as principal; compound interest.

A stipulation for the payment of interest on interest if not paid when due rendered usurious a contract to pay interest at the highest legal rate. Jefferson Std. Life Ins. Co. v. Myers, 104 F.2d 94 (5th Cir. 1939), but see, Stovall v. Illinois C.G.R.R., 722 F.2d 190 (5th Cir. 1984).

A note bearing interest at the rate of eight per centum per annum, payable semiannually, and stipulating that defaulting interest should draw the same rate of interest as the principal, was usurious. Rogers v. Rivers, 135 Miss. 756, 100 So. 385, 37 A.L.R. 313 (1924).

Where a note provides for interest from maturity at the highest legal rate and further provides if interest is not paid annually it shall become principal and bear the same rate of interest held not to be usurious. Palm v. Fancher, 93 Miss. 785, 48 So. 818 (1909).

A promise to pay compound interest for future forbearance will not be enforced. Perkins v. Coleman, 51 Miss. 298 (1875).

The statute does not prevent the renewal of notes, carrying interest already due, into the new note and making it bear interest. Perkins v. Coleman, 51 Miss. 298 (1875).

19. —Renewal of obligation.

Where an automobile was sold on a conditional sales contract and a second conditional sales contract was executed for the purpose of rescheduling monthly payments on the unpaid balance, and the rate of interest of the second conditional sales contract was usurious, assignee of contract forfeited all payments due for purchase price of the automobile even though the contract was not usurious at its inception. Associates Disct. Corp. v. Ruddock, 224 Miss. 533, 81 So. 2d 249 (1955).

A service charge made and collected by a bank in renewing an obligation is interest under another name, and where, as interest, it exceeded the rate of eight per cent per annum, it was usurious, notwithstanding evidence that it was the universal custom of banks everywhere to make a service charge on small loans. Dickey v. Bank of Clarksdale, 183 Miss. 748, 184 So. 314 (1938).

Contract became tainted with usury on renewal date where creditor at that time required note with ten percent interest added to face thereof and required debtor to pay creditor $900.00, the consideration for which was extension of loan and further forbearance of creditor. Hardin v. Grenada Bank, 182 Miss. 689, 180 So. 805 (1938).

Taint of usury held not removed from original loan by fact that renewal notes were given and that interest, computed to due date of renewal notes, would be within legal limit. Chandler v. Cooke, 163 Miss. 147, 137 So. 496 (1931).

The statute does not prevent the renewal of notes, carrying interest already due, into the new note and making it bear interest. Perkins v. Coleman, 51 Miss. 298 (1875).

20. —Building and loan association transactions.

Where a loan was negotiated by a building and loan association subsequently to the amendment of this section [Code 1942, § 36], whereby a provision making the section [Code 1942, § 36] inapplicable to such associations was eliminated, and the premium, which was fixed and payable monthly by a borrowing member of the association, added to the interest paid by him, obligated him to pay more than 10 per centum per annum, the contract was usurious. Mississippi Bldg. & Loan Ass'n v. McElveen, 100 Miss. 16, 56 So. 187 (1911).

The word "received" was applied to interest paid to a building and loan association. Mississippi Bldg. & Loan Ass'n v. McElveen, 100 Miss. 16, 56 So. 187 (1911).

A complainant assailing as usurious his contract as a stockholder in a building and loan association was not entitled (under § 2348, Code 1892), to have credited on the principal of his loan sums paid by him as stockholder on expense account or for fines and withdrawal fees. Georgia State Bldg. & Loan Ass'n v. Grant, 82 Miss. 424, 34 So. 84 (1903).

The section (§ 2348, Code 1892), had no application to a true building and loan association domiciled in this state and dealing only with its members. People's Bldg. & Loan Ass'n v. McPhillamy, 81 Miss. 61, 32 So. 1001, 95 Am. St. R. 454 (1902).

Such prior statute applied to loan contracts made with building associations in the following cases: People's Bldg. & Loan Ass'n v. McPhillamy, 81 Miss. 61, 32 So. 1001 (1902); National Mut. Bldg. & Loan Ass'n v. Farnham, 81 Miss. 364, 33 So. 2 (1902), aff'd, 194 U.S. 630, 24 S. Ct. 858, 48 L. Ed. 1158 (1904); National Mut. Bldg. & Loan Ass'n v. Brahan, 80 Miss. 407, 31 So. 840 (1902), aff'd, 193 U.S. 635, 24 S. Ct. 532, 48 L. Ed. 823 (1904); Georgia State Bldg. & Loan Ass'n v. Shannon, 80 Miss. 642, 31 So. 900 (1902); National Mut. Bldg. & Loan Ass'n v. Pinkston, 79 Miss. 468, 31 So. 834 (1902); Natchez Bldg. & Loan Ass'n v. Shields, 71 Miss. 630, 15 So. 793 (1893); Southern Home Bldg. & Loan Ass'n v. Tony, 78 Miss. 916, 29 So. 825 (1901); Shannon v. Georgia State Bldg. & Loan Ass'n., 78 Miss. 955, 30 So. 51 (1901); National Bldg. & Loan Ass'n v. Wilson, 78 Miss. 993, 30 So. 56 (1901); Sokoloski v. New S. Bldg. & Loan Ass'n., 77 Miss. 155, 26 So. 361 (1899); Crafton v. New S. Bldg. & Loan Ass'n, 77 Miss. 166, 26 So. 362 (1899); Building & Loan Ass'n v. Leonard, 74 Miss. 810, 21 So. 53 (1897); People's Bldg. & Loan Ass'n v. McElroy, 72 Miss. 434, 17 So. 348 (1894).

Earlier law: A change made in the corresponding section of the 1892 Code (§ 2348) exempting building and loan associations from the operation of the penalty against usury did not free prior illegal contracts from the objection for § 4 of the Code (§ 15, Code 1942), preserved unaffected any existing cause of action of defense. Goodman v. Durant Bldg. & Loan Ass'n, 71 Miss. 310, 14 So. 146 (1893); Southern Home Bldg. & Loan Ass'n v. Tony, 78 Miss. 916, 29 So. 825 (1901); Shannon v. Georgia State Bldg. & Loan Ass'n, 78 Miss. 955, 30 So. 51 (1901); National Bldg. & Loan Ass'n v. Wilson, 78 Miss. 993, 30 So. 56 (1901); Sokoloski v. New S. Bldg. & Loan Ass'n, 77 Miss. 155, 26 So. 361 (1899); Crafton v. New S. Bldg. & Loan Ass'n, 77 Miss. 166, 26 So. 362 (1899).

Under section § 2348 of the Code of 1892, a loan by a building and loan association was not rendered usurious by a premium which the borrowing member agrees to pay for the loan, since such premium is neither a prepayment of interest nor a deduction of money belonging to the member, but merely represents the discount of the future dividends of his shares of stock. Sulivan v. Jackson Bldg. & Loan Ass'n, 70 Miss. 94, 12 So. 590 (1892).

21. Prepayment of loan.

A lender was statutorily prohibited from computing a rebate of finance charges on a precomputed loan by the method of the rule of 78's, as provided in the promissory note, if the resulting yield to the lender on prepayment was greater than that specified in § 75-17-1(4) or exceeded the penalty allowed by § 75-17-1(12) (recodifed as § 75-17-31). When the borrowers elected to prepay the note, the lender was required to recalculate the amount of interest which it had earned over the term during which the borrowers actually had use of the borrowed money in order to come within § 75-17-1(4), limiting the bank to a specified "yield … calculated according to the actuarial method." It was incumbent upon the lender to recalculate the interest by the actuarial method and not by the rule of 78's so as not to exceed the specified legal rate of "yield." Denley v. Peoples Bank, 553 So. 2d 494 (Miss. 1989).

22. Acceleration provision.

Where plaintiffs borrowed money and executed notes with interest amounting to more than eight per centum and less than twenty per centum per annum, the lender, upon acceleration under a clause providing for all the payments to become due upon default, would have no right to interest, but could collect only the principal. Ranson v. Snyder, 222 Miss. 248, 75 So. 2d 738 (1954).

23. Forfeiture provision.

A debtor was entitled to a forfeiture of "all interest" in each of 58 pre-computed installment notes which became tainted by usury due to usurious interest charges on 203 separate forbearance agreements, and therefore the trial court erred in declaring a forfeiture only of the interest which accrued after the promissory notes first became tainted with usury via the forbearance charges. Sunburst Bank v. Keith, 648 So. 2d 1147 (Miss. 1995).

Mississippi Code § 75-17-1 is highly penal and must be construed strictly in favor of the creditor, especially with respect to the provision calling for forfeiture of both principal and interest. Allied Chem. Corp. v. Mackay, 695 F.2d 854 (5th Cir. 1983).

When faced with one reasonable construction of Miss Codes § 75-17-1 that triggers the provision calling for forfeiture of both principal and interest and one that does not the court must choose the latter. Allied Chem. Corp. v. Mackay, 695 F.2d 854 (5th Cir. 1983).

Forfeiture of interest and finance charges under § 75-17-1 was improper where the excessive charges were the result of an honest mistake and therefore exempt from forfeiture within the meaning of § 75-67-119. United Cos. Mtg. & Inv. of S.W. Miss., Inc. v. Lester, 394 So. 2d 1350 (Miss. 1981).

Where interest at a greater rate than 8 percent, but less than 20 percent having been stipulated for and collected, all interest must be forfeited and in such a case the interest which has been paid to be deducted from the remaining principal if the debt has not been entirely paid. Bell v. Tindall, 215 Miss. 343, 60 So. 2d 801 (1952).

Where lender charged usurious interest, and all interest was required to be forfeited under the statute, and where the borrower agreed to payment of fees to real estate agent and attorney and recording fees, the lender would not be charged with amount of those fees. Bell v. Tindall, 215 Miss. 343, 60 So. 2d 801 (1952).

The fact that all interest was forfeited because the interest charged was more than 8 percent but less than 20 percent did not relieve the maker of notes of the obligation to pay attorney's fees upon the amount found to be owing. Patterson v. J.W. McClintock, Inc., 201 Miss. 107, 28 So. 2d 737 (1947).

Where the happening of a contingency on which the requirement as to repayment of short term notes for periods not exceeding ten months, on which notes a rate of interest in excess of twenty per centum is contracted, is improbable (repayment not being required in case of the borrower's death), the rule that to constitute usury it is essential that the principal sum shall be repayable, at all events, and that if it is repayable only on some contingency, then the transaction is not usurious, does not apply. Fry v. Layton, 191 Miss. 17, 2 So. 2d 561, 134 A.L.R. 1330 (1941).

Where, on renewal, an obligation of $1300 was represented by a note of $1150, at 8 percent per annum, and six notes of $25, as to each of which a service charge of $1 was made, resulting in a usurious charge of interest as to such smaller notes, the entire transaction, including the note for $1150, was usurious warranting a forfeiture of interest; but the fact that the interest charged on the smaller notes in the form of service charges exceeded 20 percent did not warrant a forfeiture of both principal and interest of all the notes where, considering all the notes, the notes as part of one entire transaction, the interest as to the transaction in its entirety did not exceed 20 percent. Dickey v. Bank of Clarksdale, 183 Miss. 748, 184 So. 314 (1938).

Tenant, charged about twenty-five percent per annum on note to landlord, held entitled to recover all principal and interest paid landlord. Taylor v. Copeland, 183 Miss. 85, 181 So. 742 (1938), error overruled, 183 Miss. 90, 183 So. 519 (1938).

A contract evidenced by a promissory note executed by a farm tenant to his landlord with interest at the maximum rate allowed by law, in consideration of future advances on furnished items, violated the statute forfeiting the principal and interest in the event that the interest exceeded twenty percent, where the landlord charged eight percent interest straight instead of eight percent per annum on all items regardless of when they were advanced, so that the interest actually charged amounted to about twenty-five percent. Taylor v. Copeland, 183 Miss. 85, 181 So. 742 (1938), error overruled, 183 Miss. 90, 183 So. 519 (1938).

Charging of interest in excess of twenty percent per annum on loan secured by note and trust deed held to invalidate entire transaction and to authorize forfeiture of both principal and interest. Jones v. Lamensdorf, 175 Miss. 565, 167 So. 624 (1936).

Maker of usurious note secured by trust deed could after foreclosure recover amount for which property was sold, together with other payments on note, where usurious interest exceeded twenty percent. Chandlee v. Tharp, 161 Miss. 623, 137 So. 540, 78 A.L.R. 445 (1931).

The provision for a forfeiture of both principal and interest where more than twenty per centum per annum is charged is highly penal, and a strict construction is required. Morgan v. King, 128 Miss. 401, 91 So. 30 (1922).

A lender of money at extortionate rates of interest under contracts void as against public policy cannot maintain a suit in equity against one placed in charge of the business for an accounting where he must call in directly or indirectly the aid of the illegal contracts to make out his case. Woodson v. Hopkins, 85 Miss. 171, 37 So. 1000 (1905), error overruled, 85 Miss. 192, 38 So. 298 (1905).

24. Effect of usury.

Where there was a conflict in the evidence as to whether the contract upon which the replevin action was predicated was usurious, and the defendant had entered a plea of "not guilty", the trial court erred in giving a peremptory instruction for plaintiff. Ables v. Curle, 233 Miss. 369, 102 So. 2d 122 (1958).

The plea in replevin of "not guilty" puts in issue the defense of usury without the necessity of affirmatively stating it, so that if a contract upon which a replevin action is based is illegal for that reason, the plaintiff has no right to possession of the property. Ables v. Curle, 233 Miss. 369, 102 So. 2d 122 (1958).

In an action seeking recovery for the balance due upon a promissory note, wherein the maker counterclaimed alleging that he had signed the note in blank and received $500.00 and that the payee had filled in the amount of the note for $600.00, without his knowledge, and the alleged charge of $100.00 plus 4 percent interest was usurious and the note void, judgment on the jury's verdict for maker in an amount equal to the amount the maker had paid upon the note plus 6 percent interest from the date of payment was affirmed. Cortner v. Bennett, 230 Miss. 369, 92 So. 2d 559 (1957).

Although a contract may not be usurious at its inception, when the creditor subsequently receives, indirectly, more than 20 percent per annum interest, he confers upon the debtor the right to declare all the principal forfeited, and to recover back all payments made on the principal, as well as all usurious interest paid. Cortner v. Bennett, 230 Miss. 369, 92 So. 2d 559 (1957).

Question of usury in note secured by deed of trust later foreclosed and effect of usury upon foreclosure sale will not be adjudicated in proceeding under § 948, Code 1942 by purchaser of property at foreclosure sale to obtain possession of the property. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353 (1948).

Exacting of usury merely renders note voidable. Chandlee v. Tharp, 161 Miss. 623, 137 So. 540, 78 A.L.R. 445 (1931).

25. Waiver or release of usury.

A contract by a borrower waiving directly or indirectly the usury laws is against public policy and void. Georgia State Bldg. & Loan Ass'n v. Grant, 82 Miss. 424, 34 So. 84 (1903).

26. Remedies; nature of suit.

The highly penal forfeiture provisions of the usury laws cannot be invoked by a stranger on behalf of borrowers who have no knowledge of the impending litigation and who may or may not appreciate the act of their would-be benefactor, and, therefore, the lower court properly dismissed appellant's class action complaint for want of jurisdiction. Liddell v. Litton Sys., 300 So. 2d 455 (Miss. 1974).

In a suit alleging conspiracy among defendants to charge usurious interest rates for financing of insurance premiums, the chancellor did not err by ruling that plaintiffs could not maintain the suit as a class action where the chancellor would have been required to make separate fact findings and calculations because each of the alleged class members was a policy holder with a separate contract of insurance and related financing, where for each of the separate and distinct claims revealed by the record, each appellant had an adequate remedy at law, and where enormously complex legal and logistical problems would have been created had the suit proceeded as a class action. Evans v. Progressive Cas. Ins. Co., 300 So. 2d 149 (Miss. 1974).

In cases involving usury, parol evidence is admissible to show that the writings are not what they seem and to establish the true facts with respect to a transaction; and in such cases it may be shown by parol that a document, legal in form, is in fact a device to disguise usurious interest or that it in some way fails to reflect the real agreement, and that the sums mentioned are in truth usurious interest. Wilson Indus., Inc. v. Newton County Bank, 245 So. 2d 27 (Miss. 1971).

Wrongdoing by a party to an allegedly usurious contract will not be presumed, and in the absence of any proof to the contrary it is proper to indulge a presumption that in their business and social relations persons act honestly and properly, so that a plaintiff seeking to recover an amount paid pursuant to an allegedly usurious contract must furnish clear, positive, and certain proof of usury. Wilson Indus., Inc. v. Newton County Bank, 245 So. 2d 27 (Miss. 1971).

Although complainant was not entitled to a bill of discovery against a bank to information of numerous small loan transactions upon which to found a usury action, in view of the fact that such information was once furnished complainant by the return of cancelled notes, and there was no explanation as to their nonavailability, the action should not be finally dismissed, but should be transferred to the circuit court, since sufficient facts were alleged to entitle complainant to some relief in the event that he should fail to show a ground for discovery by amendment of his bill. Williams v. Deposit Guar. Bank & Trust Co., 190 Miss. 685, 1 So. 2d 486 (1941).

Debtor claiming usury before foreclosure sale put purchaser on notice of his claim and was entitled to have sale set aside and title declared vested in him. Hardin v. Grenada Bank, 182 Miss. 689, 180 So. 805 (1938).

Statute providing that if more than eight percent per annum shall be stipulated for or received on loan, all interest thereon shall be forfeited, condemns usurious contract as well as receipt of usurious interest. Jefferson Std. Life Ins. Co. v. Davis, 173 Miss. 854, 163 So. 506 (1935).

Claim against estate to recover amount paid on usurious contract may be probated, an action on such claim is "personal action," which survives death. Chandlee v. Tharp, 161 Miss. 623, 137 So. 540, 78 A.L.R. 445 (1931).

Under this section [Code 1942, § 36] a complainant having paid the principal of a usurious debt, is entitled to the cancellation of the deed of trust given for its security even as against an innocent holder of the notes evidencing the debt and the deed. Armor v. Bank of Loudon, 86 Miss. 658, 39 So. 17 (1905).

A suit for the recovery of interest paid upon a usurious contract is not for the recovery of a penalty eo nomine within the statute. Code 1892, § 2741; Code 1906, § 3101, and is not barred thereby. Commercial Bank v. Auze, 74 Miss. 609, 21 So. 754 (1897).

In order to enjoin a sale under a deed of trust given to secure a usurious debt, it is unnecessary for the complainant to have paid or tendered more than the principal of the debt, since under the statute he could recover back all interest paid. Parchman v. McKinney, 20 Miss. (12 S. & M.) 631 (1849); American Freehold Land & Mtg. Co. v. Jefferson, 69 Miss. 770, 12 So. 464 (1892); Southern Home Bldg. & Loan Ass'n v. Tony, 78 Miss. 916, 29 So. 825 (1901); Purvis v. Woodward, 78 Miss. 922, 29 So. 917 (1901).

One who pays usurious interest can recover it back by suit. Bond v. Jones, 16 Miss. (8 S. & M.) 368 (1847); Parchman v. McKinney, 20 Miss. (12 S. & M.) 631 (1849); O'Connor v. Clopton, 60 Miss. 349 (1882); Warmack v. Boyd, 63 Miss. 488 (1886).

27. —Application of payments of usurious interest to principal.

Payments of usurious interest are by operation of law payments on the principal of the balance of the old debt due; and when the taint of usury has attached, all subsequent payments of interest or for service charges are credited by law to the principal throughout all subsequent renewals so long as the identity of the subject matter is preserved or is traceable as belonging to the original debt. Dickey v. Bank of Clarksdale, 183 Miss. 748, 184 So. 314 (1938).

Payments by debtor on usurious contract are credited by law to principal, and all interest forfeited. Hardin v. Grenada Bank, 182 Miss. 689, 180 So. 805 (1938).

Where from inception of loan in 1920 to foreclosure in 1934 there was continuous transaction of renewals and payments, and contract was usurious, statute of limitations was properly applied in permitting credit of payments on principal debt. Hardin v. Grenada Bank, 182 Miss. 689, 180 So. 805 (1938).

A purchaser of an equity of redemption with notice of payments of usurious interest, can compel their appropriation to the principal. McAlister v. Jerman, 32 Miss. 142 (1856); Chaffe v. Wilson, 59 Miss. 42 (1881).

28. Persons entitled to claim or urge usury.

One who forms corporation to obtain loan for business purposes may not assert usury claim or defense; usury claim is available when proceeds of loan are used to meet individual's personal, nonbusiness needs and obligations, not if money is used to further profit-oriented business venture; adoption of this rule does not mean that usury as claim or defense is never available to one who forms corporation at lender's request. Galloway v. Travelers Ins. Co., 515 So. 2d 678 (Miss. 1987).

The highly penal forfeiture provisions of the usury laws cannot be invoked by a stranger on behalf of borrowers who have no knowledge of the impending litigation and who may or may not appreciate the act of their would-be benefactor, and, therefore, the lower court properly dismissed appellant's class action complaint for want of jurisdiction. Liddell v. Litton Sys., 300 So. 2d 455 (Miss. 1974).

Debtor from whom creditor exacted interest exceeding twenty percent in allowing renewals or extensions of note, held entitled to recover back all payments of principal and interest, though contract was not usurious at its inception. Chandlee v. Tharp, 161 Miss. 623, 137 So. 540, 78 A.L.R. 445 (1931).

Wife of borrower, whose property was deeded to secure renewal note and was thereafter sold and the proceeds thereof applied to payment of usurious debt, could assert usury as basis for recovery of part of proceeds of foreclosure after applying interest payments as principal. Chandler v. Cooke, 163 Miss. 147, 137 So. 496 (1931).

Usurious interest under this section [Code 1942, § 36] may be recovered by a person paying it. Brewer v. Jones, 131 Miss. 545, 95 So. 519 (1923).

A junior mortgagee can show usury on the first mortgage. Wilczinski v. Smith, 110 Miss. 251, 70 So. 347 (1915).

Judgment creditors of an insolvent debtor can raise the question of usury charged in notes secured by deed of trust which constitutes the first lien on the debtor's property. Spinks v. Jordan, 108 Miss. 133, 66 So. 405 (1914).

Before a suit for the recovery of usurious interest can be maintained, the borrower must extinguish the principal debt due the lender, and all payments will be applied to such debt until it is satisfied. Commercial Bank v. Auze, 74 Miss. 609, 21 So. 754 (1897).

29. Defense, usury as; estoppel.

Usury is a personal defense which is available only to the debtor. LaBarre v. Gold, 520 So. 2d 1327 (Miss. 1987).

In an action to enforce claims that defendant debtors had breached two retail installment contracts that had been assigned to plaintiff credit company, the defense of usury could not be asserted against plaintiff where it was a holder in due course; further, even if such defense could be asserted, the time-price doctrine took the transactions at issue outside the scope of this section. AgriStor Credit Corp. v. Lewellen, 472 F. Supp. 46 (N.D. Miss. 1979).

Usurious contract is not void but voidable at instance of debtor, who may assert it in court as defense. Hardin v. Grenada Bank, 182 Miss. 689, 180 So. 805 (1938).

Execution of renewal note, after complaining interest too high but not contending illegal, held not to estop debtor from claiming transaction usurious. Hardin v. Grenada Bank, 182 Miss. 689, 180 So. 805 (1938).

In suit by receivers of building and loan association to foreclose mortgage, answer alleging that contract did not involve a loan but a purchase price of property, and was therefore usurious because in excess of statutory rate of interest, held to state good defense. Kennedy v. Porter, 176 Miss. 742, 170 So. 286 (1936).

Usury is defense which must be pleaded, and, unless pleaded, judgment on usurious contract is valid. Chandlee v. Tharp, 161 Miss. 623, 137 So. 540, 78 A.L.R. 445 (1931).

A debtor must pay or tender into court the amount admitted to be due in an action to restrain the collection of a debt tainted with usury. Rush v. Pearson, 92 Miss. 153, 45 So. 723 (1908).

In an action of replevin by the trustee in a deed of trust given to secure a recited debt, the defendant may show illegality in a part of the debt and usury in other parts and is entitled to an appropriation of payments to the valid part of the debt. Puckett v. Fore, 77 Miss. 391, 27 So. 381 (1900).

A person may be estopped from setting up usury as a defense. Henderson v. Hartman, 65 Miss. 466, 4 So. 549 (1888).

The form of the contract does not cut off the defense of usury. McLaurin v. Parker, 24 Miss. 509 (1852).

Usury as a defense in whole or in part must be made before judgment, otherwise equity will not relieve. McRaven v. Forbes, 7 Miss. (6 Howard) 569 (1842); Yeizer v. Burke, Watt & Co., 11 Miss. (3 S. & M.) 439 (1844).

30. Limitation of time to sue, or for credit on principal.

Statute of limitations permitted credit of all payments on usurious loan between 1920 and 1934 to be credited on principal debt. Hardin v. Grenada Bank, 182 Miss. 689, 180 So. 805 (1938).

Where from inception of loan in 1920 to foreclosure in 1934 there was continuous transaction of renewals and payments, and contract was usurious, statute of limitations was properly applied in permitting credit of payments on principal debt. Hardin v. Grenada Bank, 182 Miss. 689, 180 So. 805 (1938).

An obligation to repay interest collected upon a usurious agreement made so by this section [Code 1942, § 36], is an implied contract and a suit thereon will be barred within three years. Buntyn v. National Mut. Bldg. & Loan Ass'n, 86 Miss. 454, 38 So. 345 (1905).

The acknowledgment in writing required to take a case out of the provisions of the limitation act, under a former enactment thereof (Code of 1871, § 2279), existed where the holder of the note wrote to the maker requiring security by insurance, and the maker wrote the holder in answer "We think you will run no risk in that time, as the property would be worth the amount due you if the building were to burn down." Walsh v. Mayer, 111 U.S. 31, 4 S. Ct. 260, 28 L. Ed. 338 (1884).

31. Pleadings.

Bill of discovery to require a bank to furnish complainant with data concerning numerous small loan transactions between the parties in order to recover the principal and interest thereof on the ground that such transactions were usurious, alleging that complainant did not have in his possession or available to him any of the canceled notes, was not sufficient to entitle complainant to the relief prayed for in the absence of allegations that the canceled notes had become lost or destroyed, and if lost or misplaced, that they could not be located after diligent search. Williams v. Deposit Guar. Bank &

Trust Co., 190 Miss. 685, 1 So. 2d 486 (1941).

II. Under Former Law.

32. Under former § 75-67-117.

The burden of proof is upon the borrowers to show that the lender-licensee did not furnish them with a statement showing the amount and date of the loan as provided in Code 1942, § 5591-09, or issue receipts to them for payments made on the loan as required by that section. Consumers Credit Corp. v. Stanford, 194 So. 2d 868 (Miss. 1967).

Service charges earned by a loan broker are taxable for federal income tax purposes in the year in which received, although a portion of the service charge was retained by the lender and not refunded to the broker until a later taxing period. United States v. Britt, 335 F.2d 907 (5th Cir. 1964), cert. denied, 379 U.S. 971, 85 S. Ct. 669, 13 L. Ed. 2d 563 (1965).

Interest and service charges collectible on a loan repaid before maturity out of credit life insurance which the borrower was required to procure are based on the number of months which the loan had run before such repayment. Jackson Inv. Co. v. Wingo, 248 Miss. 388, 159 So. 2d 175 (1964).

Loan broker's service charges are not "interest" so as to render loan usurious. Hooper v. Aetna Fin. Co., 244 Miss. 799, 145 So. 2d 907 (1962).

That a borrower was charged seventeen cents in excess of the permissible amount does not invalidate the contract of loan. Powell v. Sowell, 245 Miss. 53, 145 So. 2d 168 (1962), error overruled, 245 Miss. 64, 146 So. 2d 576 (1962).

Transactions involving secured loans to consumer, though improvident, were permissible under the Small Loans Regulatory Law. Early v. Williams, 239 Miss. 320, 123 So. 2d 446 (1960).

ATTORNEY GENERAL OPINIONS

Provisions of Section 75-17-1 prescribing legal rates of interest do not apply to the state or its political subdivisions. Baker, Nov. 8, 2002, A.G. Op. #02-0624.

RESEARCH REFERENCES

ALR. Retrospective application and effect of statutory provision for interest or changed rate of interest. 4 A.L.R.2d 932.

Rate of interest after maturity on obligation which fixed rate of interest expressly until maturity. 16 A.L.R.2d 902.

Computing interest on basis of 360 days in year, 30 days in month, or the like, as usury. 35 A.L.R.2d 842.

What statute of limitations governs action or claim for affirmative relief against usurious obligation or to recover usurious payment. 48 A.L.R.2d 401.

Quantum, degree, or weight of evidence to sustain usury charge. 51 A.L.R.2d 1087.

Usury: commissions to agents, brokers, etc. incident to loan. 52 A.L.R.2d 703.

Admissibility, in civil case involving usury issue, of evidence of other assertedly usurious transactions. 67 A.L.R.2d 232.

What is "compound interest" within meaning of statutes prohibiting the charging of such interest. 10 A.L.R.3d 421.

Advance in price on credit sale as compared with cash sale as usury. 14 A.L.R.3d 1065.

Usury as affected by acceleration clause. 66 A.L.R.3d 650.

Contingency as to borrower's receipt of money or other property from which loan is to be repaid as rendering loan usurious. 92 A.L.R.3d 623.

Leaving part of loan on deposit with lender as usury. 92 A.L.R.3d 769.

Application of usury laws to transactions characterized as "leases". 94 A.L.R.3d 640.

Usury in connection with loan calling for variable interest rate. 18 A.L.R.4th 1068.

Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts. 41 A.L.R.4th 694.

Preemption Issues Under Depository Institutions Deregulation and Monetary Control Act. 28 A.L.R. Fed. 2d 467.

Am Jur. 44B Am. Jur. 2d, Interest and Usury §§ 1 et seq.

14A Am. Jur. Pl & Pr Forms (Rev), Interest and Usury, Forms 11-16. (complaints as to usury).

14A Am. Jur. Pl & Pr Forms (Rev), Interest and Usury, Form 18 (judgment or decree directing forfeiture of all interest on usurious transaction).

14A Am. Jur. Pl & Pr Forms (Rev), Interest and Usury, Forms 31-38 (cancellation of usurious instruments).

14A Am. Jur. Pl & Pr Forms (Rev), Interest and Usury, Forms 51-57 (recovery of statutory penalty for usury).

14A Am. Jur. Pl & Pr Forms (Rev), Interest and Usury, Forms 71-78 (pleading usury as defense).

10 Am. Jur. Legal Forms 2d, Interest and Usury § 150:5 et seq. (provisions as to fixed rate of interest).

10 Am. Jur. Legal Forms 2d, Interest and Usury § 150:13 et seq. (provisions as to variable rate and amount of interest).

10 Am. Jur. Legal Forms 2d, Interest and Usury §§ 150:75, 150:76 (disclaimer of usurious intent).

10 Am. Jur. Legal Forms 2d, Interest and Usury § 150:77 (contract eliminating part of note and mortgage).

13B Am. Jur. Legal Forms 2d, Mortgages and Trust Deeds § 179:307 (loan charges-maximum loan charge in deed of trust).

14B Am. Jur. Legal Forms 2d, Partnership § 194:206 et seq. (interest on contributions).

CJS. 47 C.J.S., Interest and Usury; Consumer Credit § 77-79 et seq.

Law Reviews. Abbott, Some Basic Priority Problems in a Land Development Project in Mississippi with Emphasis Upon Power of Sale Foreclosure Procedures. 50 Miss. L. J. 665, September 1979.

1987 Mississippi Supreme Court Review, Usurious loans. 57 Miss. L. J. 490, August, 1987.

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Harold Weisblatt, Checks, Drafts, and Notes (Matthew Bender).

§ 75-17-3. Evasion of six percent interest law; interest forfeited if higher rate secretly exacted.

If any person shall lend to another any sum of money and take any note or evidence of debt which shall stipulate a rate of interest not greater than six (6) per centum per annum after the date of the loan or after maturity, but who shall in fact contract for, charge, collect or receive as compensation or consideration for, or as the result of, such loan, directly or indirectly, a sum of money in excess of six (6) per centum per annum from the date of the loan, or a sum of money when taken with the interest contracted for, is in excess of six (6) per centum per annum from the date of the loan, such person shall forfeit all interest, and if the interest shall have been paid, same may be recovered by suit.

SOURCES: Codes, Hemingway's 1917, § 2076; 1930, § 1947; 1942, § 37; Laws, 1914, ch. 137.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by inserting "of the loan" following "rate of interest not greater than six (6) per centum per annum after the date." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Cross References — Legal rate of interest, see § 75-17-1.

JUDICIAL DECISIONS

1. In general.
2. Particular applications.
3. Limitation of actions.

1. In general.

To entitle one to recover back payments under the statute, proof of usury must be clear, positive, and certain. Ready-Mix Concrete & Concrete Prods. Co. v. Perry, 239 Miss. 329, 123 So. 2d 241 (1960).

The statute is highly penal and must be construed in favor of the creditor. Ready-Mix Concrete & Concrete Prods. Co. v. Perry, 239 Miss. 329, 123 So. 2d 241 (1960).

In determining whether a transaction is tainted with usury, the court will look through the form to the substance. Ready-Mix Concrete & Concrete Prods. Co. v. Perry, 239 Miss. 329, 123 So. 2d 241 (1960).

The court in determining the question whether persons are actually engaged in lending money at usurious rates of interest has a right to look through the forms which the transactions were made to assume and to base its decision upon the real facts. Alt v. Bailey, 211 Miss. 547, 52 So. 2d 283 (1951).

This statute [Code 1942, § 36] was enacted to prevent evasions of the statute (Code 1942, § 9697(v)), exempting from taxation notes and loans made at a rate of interest not greater than 6 percent per annum. Johnson v. Carter, 203 Miss. 38, 33 So. 2d 296 (1948).

This statute [Code 1942, § 36] does not embrace a note which was not designed to evade taxation under Code 1942, § 9697(v). Johnson v. Carter, 203 Miss. 38, 33 So. 2d 296 (1948).

This statute does not apply where the lender is a nonresident of the state. Armstrong v. Alliance Trust Co., 88 F.2d 449 (5th Cir. 1937).

2. Particular applications.

A trial judge in a divorce proceeding abused his discretion in not ordering the husband to pay prejudgment interest on $20,000 he had misappropriated from his children's trust funds, calculated from the date of each separate taking. Draper v. Draper, 658 So. 2d 866 (Miss. 1995).

That one lending money on interest to enable another to carry on a business, materials for which were to be purchased from him, also made a profit on such materials furnished on credit does not render the transaction usurious. Ready-Mix Concrete & Concrete Prods. Co. v. Perry, 239 Miss. 329, 123 So. 2d 241 (1960).

Charge of $7.62 made up of interest at 6% on note for 30 days, service charge of $1.00 and transit time interest of $.94 for 5 days, paid May 31, 1946, on note dated May 1, 1946, due ninety days after date, is not usurious as holder of note collected less than it was entitled to demand. Hood v. First Nat'l Bank, 208 Miss. 658, 45 So. 2d 251 (1950).

Holder of note due specified number of days after date, and not on or before that date, with interest at rate of 6% per annum, is entitled to charge maker interest at rate of 6% per annum to maturity of note notwithstanding fact that note is actually paid before maturity, and even though holder waives portion, transaction is still not usurious when holder does not receive as much as it is entitled to demand on due date. Hood v. First Nat'l Bank, 208 Miss. 658, 45 So. 2d 251 (1950).

Note in principal amount to include interest at 6 percent for the first year in accordance with alleged oral agreement, reciting amount of interest to be 8 percent after maturity, but which in fact exceeded 6 percent because the maturity date was less than a year from the date of the note, is not within the purview of this section. Johnson v. Carter, 203 Miss. 38, 33 So. 2d 296 (1948).

Payment of maximum interest before due held not to constitute "usury." Beck v. Tucker, 147 Miss. 401, 113 So. 209 (1927).

Payments to recompense creditor for interest paid by him after extending due date held violation of law authorizing forfeiture of interest on exacting more than six percent. Beck v. Tucker, 147 Miss. 401, 113 So. 209 (1927).

3. Limitation of actions.

Three-year, and not six-year, statute applied to defendant's claim for overpayment on note based in part on usurious interest payments. Hawkins v. Ellis, 168 Miss. 428, 151 So. 569 (1934).

Three-year statute applies to suits to recover illegal or usurious interest. Beck v. Tucker, 147 Miss. 401, 113 So. 209 (1927).

Cause of action to recover usurious or illegal interest does not accrue until payment of principal debt. Beck v. Tucker, 147 Miss. 401, 113 So. 209 (1927).

RESEARCH REFERENCES

ALR. Computing interest on basis of 360 days in year, 30 days in month, or the like, as usury. 35 A.L.R.2d 842.

What statute of limitations governs action or claim for affirmative relief against usurious obligation or to recover usurious payment. 48 A.L.R.2d 401.

Admissibility, in civil case involving usury issue, of evidence of other assertedly usurious transactions. 67 A.L.R.2d 232.

Application of usury laws to transactions characterized as "leases." 94 A.L.R.3d 640.

Usury in connection with loan calling for variable interest rate. 18 A.L.R.4th 1068.

Am Jur. 44B Am. Jur. 2d, Interest and Usury § 275 et seq.

CJS. 47 C.J.S., Interest & Usury; Consumer Credit § 228 et seq.

§ 75-17-5. Discount, interest, bank issues.

The issues, bills, notes, bonds, or certificates of deposit of any bank, corporation, or association of persons formed for banking purposes, or possessing banking privileges, situated within or without the limits of this state, shall not be loaned in this state by any agent, officer or person employed by, or having any interest in or connection with, any such bank, corporation, or association of persons, at a greater rate of discount or interest than is allowed by the laws of this state. All contracts and agreements made in violation of the provisions of this section shall, as to the whole of the discount or interest allowed or paid, or agreed to be allowed or paid, be void, and the discount or interest may be recovered back by the person suffering such discount or paying such interest.

SOURCES: Codes, Hutchinson's 1848, ch. 47, art. 3 (1), art. 7 (3); 1857, ch. 50, art. 2; 1871, § 2280; 1880, § 1142; 1892, § 2349; 1906, § 2679; Hemingway's 1917, § 2077; 1930, § 1948; 1942, § 38.

Cross References — Loans under pawnbrokers' law, see § 75-67-1 et seq.
Small loan regulatory law, see § 75-67-101 et seq.

JUDICIAL DECISIONS

1. In general.

Even if check cashing service was involved in discounting negotiable instruments, rather than in making loans, civil usury statute's 8% allowable interest rate would be applicable. State v. Roderick, 704 So. 2d 49 (Miss. 1997), reh'g denied, 703 So. 2d 863 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694 (1998).

When negotiable instrument is purchased at discount, discount is limited to 8% interest limit set by civil usury statute. State v. Roderick, 704 So. 2d 49 (Miss. 1997), reh'g denied, 703 So. 2d 863 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694 (1998).

RESEARCH REFERENCES

Am Jur. 44B Am. Jur. 2d, Interest and Usury § 119 et seq., 184.

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§ 75-17-7. Interest on judgments and decrees.

All judgments or decrees founded on any sale or contract shall bear interest at the same rate as the contract evidencing the debt on which the judgment or decree was rendered. All other judgments or decrees shall bear interest at a per annum rate set by the judge hearing the complaint from a date determined by such judge to be fair but in no event prior to the filing of the complaint.

SOURCES: Codes, Hutchinson's 1848, ch. 47, art. 2 (3), ch. 54, art. 2 (38); 1857, ch. 50, arts. 1, 3, ch. 62, art. 100; 1871, §§ 1269, 2279, 2281; 1880, §§ 1141, 1143, 1958; 1892, § 2350; 1906, § 2680; Hemingway's 1917, § 2078; 1930, § 1949; 1942, § 39; Laws, 1975, ch. 336, § 1; Laws, 1989, ch. 311, § 5, eff from and after July 1, 1989.

Editor's Note — Laws of 1975, ch. 366, § 2, effective July 1, 1975, reads as follows:

"SECTION 2. This act shall apply only to judgments and decrees rendered on or after the effective date of this act. Judgments or decrees rendered prior to the effective date of this act shall continue to bear interest at the same rate as was applicable at the time the judgment or decree was rendered."

Laws of 1989, ch. 311, § 7, effective from and after July 1, 1989, provides as follows:

"SECTION 7. The provisions of this act shall apply only to causes of action accruing on or after July 1, 1989."

Cross References — Judgments in chancery court, see § 11-5-79.

Applicability of interest rate provided for in this section to notes securing rents due on leases of prison agricultural lands, see § 47-5-66.

Payment of interest on monthly installment loans, see § 75-67-39.

Payment of money secured by mortgage or deed of trust, see § 89-1-49.

JUDICIAL DECISIONS

1. In general.
2. Interest allowable from date of verdict or judgment.
3. Judgments and decrees based on contract.
4. Workers' compensation cases.
5. Domestic relations cases.
6. Insurance cases.

1. In general.

In an action by a member of two limited liability companies against the companies and three individual members, the chancellor erred in granting post-judgment interest at the "statutory rate" because there was no specific statutory rate for post-judgment interest. Bluewater Logistics, LLC v. Williford, 55 So. 3d 148 (Miss. 2011).

Employee was entitled to post-judgment interest where the Mississippi Employee Appeals Board (EAB) was authorized to impose interest on the back pay award against the Mississippi Department of Human Services; on remand, the EAB had to determine the post-judgment interest rate to which the employee was entitled. Miss. Dep't of Human Servs. v. McNeel, 10 So. 3d 444 (Miss. 2009).

In an action under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C.S. §§ 621-634, where the appellate court held that the former employee was entitled to prejudgment and post-judgment interest, the appellate court noted that the "to be fair" language of Miss. Code Ann. § 75-17-7 qualified the date used for awarding interest. It did not clothe the trial judge with discretion to award or not to award interest; the language of the statute indicated that post-judgment interest should be given, at a rate subject to the discretion of the court. Cash Distrib. Co. v. Neely, 947 So. 2d 317 (Miss. Ct. App. 2006), affirmed by 947 So. 2d 286, 2007 Miss. LEXIS 23 (Miss. 2007).

Motion for post-judgment interest in a negligence action was not governed by the 10-day time period in Miss. R. Civ. P. 59(e) because the right to post-judgment interest was a statutory right governed by Miss. Code Ann. § 75-17-7; therefore, a motion filed 58 days after judgment was timely under Miss. R. Civ. P. 60(a). Miss. Dep't of Mental Health v. Hall, 936 So. 2d 917 (Miss. 2006).

Where a redevelopment agency and landowners entered into a settlement of their dispute, and the agreement stated that the parties acknowledged the issue of assessment of interest but it did not provide for a rate or award of interest on the amount to be paid by the agency, the first part of Miss. Code Ann. § 75-17-7 was inapplicable to the facts. Tupelo Redevelopment Agency v. Abernathy, 913 So. 2d 278 (Miss. 2005).

In a defamation case, a court properly imposed post-judgment interest at a rate of eight percent where the court was within its discretion in imposing the eight percent postjudgment interest rate pursuant to the revised Miss. Code Ann. § 75-17-7. Morris Newspaper Corp. v. Allen, — So. 2d —, 2004 Miss. App. LEXIS 981 (Miss. Ct. App. Oct. 12, 2004), opinion withdrawn by, substituted opinion at 932 So. 2d 810, 2005 Miss. App. LEXIS 765 (Miss. Ct. App. 2005).

Trial court erred in awarding prejudgment interest pursuant to Miss. Code Ann. § 75-17-7 because the principal amount was not fixed prior to the judgment; it was an abuse of discretion for the trial court to award the interest because no such award could have been rationally made given the circumstances. Coho Res., Inc. v. McCarthy, 829 So. 2d 1 (Miss. 2002).

The trial judge's awarding of interest at the rate of eight percent after date of entry of the order was within his discretion under the statute. Preferred Risk Mut. Ins. Co. v. Johnson, 730 So. 2d 574 (Miss. 1998).

Municipality is not liable for payment of interest on arbitration award. City of Meridian v. Algernon Blair, Inc., 615 F. Supp. 709 (S.D. Miss. 1985).

Since judgment making award of impleaded fund is "judgment in rem," impleading plaintiff is not liable for interest after payment into court, under this section [Code 1942, § 39] since it applies only to "judgment in personam." Gayden v. Kirk, 208 Miss. 283, 44 So. 2d 410, 15 A.L.R.2d 471 (1950).

Where decree against insurance company included interest to time funds were paid into court, decree properly provided that amount due should bear interest. Aetna Ins. Co. v. Natchez Hotel Co., 160 Miss. 818, 134 So. 582 (1931).

A case where six percent interest was properly allowed from the date of the action by a verdict against municipality. Town of Senatobia v. Ryan, 106 Miss. 413, 63 So. 680 (1913).

The statute does not include allowances made by a county. Board of Supvrs. v. Klein, 51 Miss. 807 (1876).

2. Interest allowable from date of verdict or judgment.

In proceedings on a city's condemnation of a utility's assets, it was error to order the city to pay interest pursuant to Miss. Code Ann. § 75-17-1(1) because the applicable statute was Miss. Code Ann. § 75-17-7. City of Gulfport v. Dedeaux Util. Co., — So. 3d —, 2016 Miss. LEXIS 130 (Miss. Mar. 24, 2016).

In an asbestos case alleging failure to warn, it was not error to award postjudgment interest at the rate of eight percent from the day after the judgment was entered because Miss. Code Ann. § 75-17-7 granted the trial court broad discretion to make this determination. Union Carbide Corp. v. Nix, 142 So. 3d 374 (Miss. June 5, 2014).

Postjudgment pre-petition interest, under Miss. Code Ann. § 75-17-7, was disallowed a judgment creditor, but he was entitled to maintenance in the amount of $ 6,240 in addition to the $200,000 judgment principal amount, and $15,000 for medical bills, on a fraudulent transfer judgment on liquidation under 11 U.S.C.S. § 726(a). In re Gulfport Pilots Ass'n, 434 B.R. 380 (Bankr. S.D. Miss. 2010).

Where the wards prevailed in their suit against the bank for the misappropriation of funds from a guardianship account, the chancery court erred by awarding the wards prejudgment interest under Miss. Code Ann. § 75-17-7 in the amount of $347,385.62; the chancery court erred in calculating prejudgment interest from a date prior to the filing of the complaint. Because the bank was not grossly negligent and did not engage in fraud or intentional misconduct, the bank's actions did not support an award of compound interest; the chancery court did not abuse its discretion by awarding prejudgment interest at the rate of eight percent per annum, compounded annually to compensate for the time value of the money due as damages. Williams v. Duckett (In re Duckett), 991 So. 2d 1165 (Miss. 2008).

Trial court was within its discretion in imposing an eight percent post-judgment interest rate pursuant to Miss. Code Ann. § 75-17-7 in the anchorperson's breach of contract action. Morris Newspaper Corp. v. Allen, — So. 2d —, 2004 Miss. App. LEXIS 981 (Miss. Ct. App. Oct. 12, 2004), opinion withdrawn by, substituted opinion at 932 So. 2d 810, 2005 Miss. App. LEXIS 765 (Miss. Ct. App. 2005).

In a condemnation proceeding, the trial court erred when it compounded the interest and made a distinction between pre- and post-judgment interest because the eminent domain statutory scheme provided a specific provision for interest in Miss. Code Ann. § 11-27-19, and eminent domain judgments were not based on notes, accounts, sales or contracts; therefore, Miss. Code Ann. § 75-17-1(1) and Miss. Code Ann. § 75-17-7 did not apply to eminent domain judgments, and also "legal interest" was simple interest, not compounded interest. Dedeaux Util. Co. v. City of Gulfport, 938 So. 2d 838 (Miss. 2006), remanded by 63 So. 3d 514, 2011 Miss. LEXIS 191 (Miss. 2011).

Post-judgment interest over and above the statutory cap may be awarded against a governmental entity because such is not excluded under Miss. Code Ann. § 11-46-15(2). Miss. Dep't of Mental Health v. Hall, 936 So. 2d 917 (Miss. 2006).

On appeal with supersedeas from a chancellor ordered judgment for past due child support of $3,000, the Supreme Court would allow the statutory penalty under Mississippi Code § 75-17-7, together with interest on the delinquent court ordered support from the due date of each unpaid payment. Calton v. Calton, 485 So. 2d 309 (Miss. 1986).

In proceeding to enforce past due child support, court must assess interest at legal rate on each past due payment from date that payment became due; sums paid by supporting spouse at time spouse is in arrears is applied first to interest obligations, then to extinguish principal amount of oldest outstanding support payment, then next oldest unpaid payment, and so forth. Brand v. Brand, 482 So. 2d 236 (Miss. 1986).

The trial court erred in failing to provide pursuant to § 75-17-7 for the payment of interest on past-due child support payments from the date of the entry of the decree adjudging the father to be in default of such payments. Walters v. Walters, 383 So. 2d 827 (Miss. 1980).

Plaintiffs who were wrongfully discharged from their professional positions with a school district were entitled to prejudgment interest on their back pay awards and, in the absence of an agreement to the contrary, the proper rate of interest was the statutorily allowed six percent. Ayers v. Western Line Consol. Sch. Dist., 404 F. Supp. 1225 (N.D. Miss. 1975), rev'd on other grounds, 555 F.2d 1309 (5th Cir. 1977), reh'g denied, 564 F.2d 97 (5th Cir. 1977), reh'g denied, 564 F.2d 98 (5th Cir. 1977), vacated in part, 439 U.S. 410, 99 S. Ct. 693, 58 L. Ed. 2d 619 (1979), on remand, 592 F.2d 280 (5th Cir. 1979).

Where the judgment of the trial court in favor of plaintiff in the sum of $2500 was affirmed on condition that defendant agreed to an additur of $10,000, plaintiff's motion to add interest on the additur from the date of the judgment in the trial court was overruled. Altom v. Wood, 300 So. 2d 786 (Miss. 1974).

The assessment of interest at the rate of 6 percent from the date of the entry of a decree in a lower court until satisfied is correct, and the fact that the judgment debtor appealed to the Supreme Court, thereby postponing prompt payment of the judgment against him, is immaterial. Porter v. Ainsworth, 288 So. 2d 709 (Miss. 1974).

Where judgment had been obtained against the operator of an automobile which struck and killed a flagman during the course of a drag race, and a subsequent judgment had been obtained against the insurer of the involved vehicle, interest was properly computed on the first judgment from the date of that judgment, since the supreme court of Mississippi has held in many cases that interest will be paid at the legal rate of 6 percent from the date of judgment. United States Fid. & Guar. Co. v. Stafford, 253 So. 2d 388 (Miss. 1971), overruled on other grounds, State Farm Mut. Auto. Ins. Co. v. Mettetal, 534 So. 2d 189 (Miss. 1988).

When a judgment based on a tort is reduced by the supreme court by remittitur, in lieu of reversal, the judgment bears interest from its date in the trial court at the statutory rate of six percentum. Illinois Cent. R.R. v. Nelson, 245 Miss. 411, 148 So. 2d 712, 4 A.L.R.3d 1217 (1963).

Where a case has been remanded for a new trial unless part of the damages shall be remitted, plaintiff, upon entering the remittitur, is entitled to 6% interest on the reduced amount from the date of the original judgment. Mississippi State Hwy. Comm'n v. Herring, 241 Miss. 729, 133 So. 2d 895 (1961), corrected, 241 Miss. 737, 133 So. 2d 895 (1961).

In a suit against guarantors of a check, interest is allowable only from the date of the decree, and not from the date of the check. Presley v. American Guarantee & Liab. Ins. Co., 237 Miss. 807, 116 So. 2d 410 (1959).

Since interest is allowable on judgments rather than on verdicts, interest would be allowed plaintiff in a tort action only from the date the Supreme Court entered judgment in his favor, reversing a judgment which had been entered in defendant's favor below notwithstanding a jury verdict for plaintiff, rather than the date of jury's verdict. Grice v. Central Elec. Power Ass'n, 230 Miss. 437, 96 So. 2d 909 (1957), but see, In re Mississippi Rules of Appellate Procedure, slip op. (Miss. Dec. 15, 1994).

Where Federal Crop Insurance Corporation defaulted in payment of insurance benefits as a result of crop failure, interest of six percent per annum on the judgment follows as a matter of law. Federal Crop Ins. Corp. v. DeCell, 222 Miss. 643, 76 So. 2d 826 (1955).

Where City of Jackson assessed property and there was an unsuccessful appeal with an award being made to the city of 10 percent statutory damages for unsuccessful appeal from tax assessment, the judgment was subject to interest at the rate of 6 percent from date of judgment. Sellers v. City of Jackson, 221 Miss. 150, 75 So. 2d 265 (1954).

Where judgment was rendered in favor of state tax collector recovering premium tax on consideration paid for annuity contracts written in the state by insurance companies, judgment would be rendered for only the amount of taxes due, without the assessment of any interest. State ex rel. Gully v. Mutual Life Ins. Co., 189 Miss. 830, 198 So. 763 (1940).

3. Judgments and decrees based on contract.

In a contract dispute regarding damage caused to equipment owned by a utilities commission, a trial judge did not err by awarding prejudgment interest under Miss. Code Ann. § 75-17-7; the argument that Miss. Code Ann. § 75-17-1 applied was rejected. Upchurch Plumbing, Inc. v. Greenwood Utils. Comm'n, 964 So. 2d 1100 (Miss. 2007).

When a contractor damaged a utilities commission's equipment in the process of testing a control system the contractor installed, the trial court's award of prejudgment interest to the commission was proper because it was authorized by Miss. Code Ann. § 75-17-7. Upchurch Plumbing, Inc. v. Greenwood Utils. Comm'n, — So. 2d —, 2007 Miss. LEXIS 225 (Miss. Apr. 19, 2007), opinion withdrawn by, substituted opinion at 964 So. 2d 1100, 2007 Miss. LEXIS 495 (Miss. 2007).

When a utilities commission sued a contractor for damaging the commission's equipment in the process of testing a defective control system the contractor installed, the calculation of prejudgment interest the commission was awarded was controlled by Miss. Code Ann. § 75-17-7, instead of Miss. Code Ann. § 75-17-1(1) because it was apparent that § 75-17-1(1) allowed trial judges to award prejudgment interest only where a contract in issue specifically allowed it, but nothing in the statute said prejudgment interest could only be awarded where a contract provided for it. Upchurch Plumbing, Inc. v. Greenwood Utils. Comm'n, — So. 2d —, 2007 Miss. LEXIS 225 (Miss. Apr. 19, 2007), opinion withdrawn by, substituted opinion at 964 So. 2d 1100, 2007 Miss. LEXIS 495 (Miss. 2007).

Circuit court exceeded the scope of the Supreme Court's mandate when it ordered that the Public Employees' Retirement System pay interest on the employee's disability benefits. The Supreme Court's mandate had simply required benefits to be restored, with back pay. Pub. Emples. Ret. Sys. v. Freeman, 868 So. 2d 327 (Miss. 2004).

The trial court was free to determine the calculation of the rate of pre-judgment interest payable to the prevailing party. Estate of Baxter v. Shaw Assocs., 797 So. 2d 396 (Miss. Ct. App. 2001).

There were bona fide disputes in the case regarding both liability and damages; as a result, the court, in its discretion, found that an award of prejudgment interest was not warranted. Miss. Chem. Corp. v. Dresser-Rand Co., — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 21965 (S.D. Miss. Sept. 12, 2000), affirmed by 287 F.3d 359, 2002 U.S. App. LEXIS 5305, CCH Prod. Liab. Rep. P16308, 47 U.C.C. Rep. Serv. 2d (CBC) 244, 58 Fed. R. Evid. Serv. (CBC) 1087 (5th Cir. Miss. 2002).

Where (1) the complaint was founded upon a written contract, (2) the contract provided for interest at the contract rate of 34.71% per annum, (3) there was no finding of fact or allegation that this rate was not within the rates allowed by law, and (4) the rate was below the maximum finance charges allowed by the Mississippi Small Loan Law [§ 75-67-101 et seq.], the circuit court erred in awarding interest on the judgment at the rate of 8% per annum rather than the contract rate. Tower Loan of Miss., Inc. v. Jones, 749 So. 2d 189 (Miss. Ct. App. 1999).

Amount of damages was liquidated, as required to support award of prejudgment interest, in action on fire insurance policy, where there was no dispute that house and its contents were total loss and that house and its contents were worth amount for which they were insured. Allstate Ins. Co. v. McGory, 697 So. 2d 1171 (Miss. 1997).

In a breach of contract action, prejudgment interest from the date the complaint was filed should have been awarded to the plaintiff pursuant to § 75-17-7 where the contract did not designate any interest, but the amount of damages was certain. American Fire Protection, Inc. v. Lewis, 653 So. 2d 1387 (Miss. 1995).

A bank failed to demonstrate any abuse of discretion in a trial judge's decision to award prejudgment interest to a debtor who was charged a usurious interest rate on 203 forbearance agreements extending written promissory notes where the judge computed the prejudgment interest based on unequivocal data jointly supplied by the debtor and the bank which furnished the payment history of all the notes. Sunburst Bank v. Keith, 648 So. 2d 1147 (Miss. 1995).

In an action by a debtor against a bank to cancel the principal and interest in a promissory note and a deed of trust securing the note, the trial court properly considered a defunct judgment which had been obtained by the bank against the debtor and her husband in determining the debtor's liability to the bank where the defunct judgment was a sufficient basis to form the consideration for a component part of a new obligation entered into by the debtor; however, the trial court erred in computing the amount of consideration to include interest on the principal of the judgment debt beyond the seven years after the rendition of the judgment as provided in § 15-1-43. Under the provisions of § 75-17-7 interest should have been charged at the rate of eight percent per year for seven years to determine the amount of the former legal obligation where the note leading to the earlier judgment had provided for interest of eight percent per year. Keller v. Citizens Bank, 399 So. 2d 1332 (Miss. 1981).

Successful plaintiffs in an action to recover an amount due under a highway contract were entitled to interest from the time that the money sued for became due rather than from the time of judgment. Trinidad Asphalt Mfg. Co. v. Gregory, 166 F.2d 745 (5th Cir. 1948).

4. Workers' compensation cases.

Under § 75-17-7, an injured employee was entitled to interest on past due compensation only from the date the employee filed his petition to controvert. Smith v. Jackson Constr. Co., 607 So. 2d 1119 (Miss. 1992).

A claimant is entitled to interest on unpaid instalments of a referee's award from their due dates until the commission's modification of the award. Busby v. Ingalls Shipbuilding Corp., 236 Miss. 870, 112 So. 2d 376 (1959).

On reversing a denial of death benefits, the supreme court will leave it to the commission to say whether penalty should be imposed, but will direct the allowance of interest of six percent on death benefits from the date the beneficiaries were entitled to receive them. Russell v. Sohio S. Pipe Lines, 236 Miss. 722, 112 So. 2d 357 (1959).

Claimants were entitled to interest at 6 percent per annum from the respective due dates of workers' compensation payments until paid or tendered. Harris v. Suggs, 233 Miss. 533, 102 So. 2d 696 (1958); Grubbs v. Revell Furn. Co., 234 Miss. 319, 106 So. 2d 390 (1958); Fair Stores v. Bryant, 238 Miss. 434, 118 So. 2d 295 (1960); Davis v. Clark-Burt Roofing Co., 238 Miss. 464 (1960).

Interest on workers' compensation payments begins on their due dates, and not on the date of the supreme court's judgment reversing denial of award. Goodnite v. Farm Equip. Co., 234 Miss. 360, 106 So. 2d 683 (1958).

Supreme court on reversing denial of compensation may require payment of interest on each instalment from its due date until paid. Goodnite v. Farm Equip. Co., 234 Miss. 360, 106 So. 2d 683 (1958).

Interest on compensation payments prior to date of supreme court's judgment, reversing a denial of compensation, denied. Poole v. R.F. Learned & Son, 234 Miss. 362, 103 So. 2d 396 (1958).

Upon the affirmance of an award of workers' compensation payments to the deceased employee's parents, who were found to be partially dependent upon the employee, claimant's motion for five percent statutory damages, and six percent interest on all instalments which then had become due and remained unpaid, was sustained, as was their motion for attorneys' fees in the amount of one third of the award. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850 (1958).

On a motion to correct judgment, supreme court adjudged that each installment of workers' compensation should bear 6% interest from its date until paid, and the claimant was entitled to 5% damages on unpaid installments with interest that had accrued to date. United States Fid. & Guar. Co. v. Collins, 231 Miss. 319, 96 So. 2d 456 (1957).

In a workers' compensation proceeding, a claimant who was awarded only permanent partial disability benefits when he was entitled to temporary total disability benefits until he recovered from an operation and attained maximum recovery, was, upon motion, entitled to 5% damages, and 6% interest. Houston Contracting Co. v. Reed, 231 Miss. 213, 95 So. 2d 231 (1957).

Where the supreme court reversed the trial court's overturning of a workers' Compensation Board order allowing employee compensation for 50 percent loss of wage earning capacity, employee's motion for 6 percent interest was sustained to the extent that each weekly instalment of compensation should bear interest at the rate of 6 percent per annum from its due date until paid. Russell v. Southeastern Utils. Serv. Co., 230 Miss. 272, 92 So. 2d 544 (1957).

5. Domestic relations cases.

Because the case involved child support, which could be waived, interest could not be waived; the chancery court rendered a judgment in favor of the mother for past-due child support and insurance premiums and awarded her in attorney's fees, which were incurred in attempting to collect past-due child support from the father, and interest had to be calculated on those amounts. Oster v. Ratliff, — So. 3d —, 2016 Miss. App. LEXIS 229 (Miss. Ct. App. Apr. 19, 2016).

Although a chancery court properly determined a father was in arrears on his child support obligation, the chancery court erred by not awarding the mother interest on the arrearage, Miss. Code Ann. § 75-17-7, because interest accrued on each support payment from the date it became due. Caplinger v. Caplinger (Julian), 108 So. 3d 992 (Miss. Ct. App. 2013).

Because the voluntary termination of a father's parental rights under Miss. Code Ann. [former] § 93-15-103(3)(a) extinguished his obligation to pay child support, a mother and child were not able to later recover support after 1984; however, a chancellor did not err by setting an eight percent interest rate on the amounts due prior to this date under Miss. Code Ann. § 75-17-7. Beasnett v. Arledge, 934 So. 2d 345 (Miss. Ct. App. 2006).

In a divorce case, the husband's entitlement to an additional payment from the wife remained an unliquidated claim until the date of the judgment, as a result, he was not entitled to postjudgment interest. Jones v. Jones, 904 So. 2d 1143 (Miss. Ct. App. 2004).

Award of back child support of $ 89,848 and of interest at eight percent per annum was proper, as the chancellor had the discretion to set the rate of interest pursuant to Miss. Code Ann. § 75-17-7. As to the amount of interest awarded, notwithstanding the lower interest rates at the time of the judgment, the child support payments owed by the husband were due over several years in which interest rates fluctuated; thus, the chancellor did not abuse his discretion. Houck v. Ousterhout, 861 So. 2d 1000 (Miss. 2003).

Where a trial court awarded a child support arrearage against a father and in favor of an adult child on the mother's action to recover arrearages, the trial court erred in failing to award interest on the amount owed. Ladner v. Logan, 857 So. 2d 764 (Miss. 2003).

Chancery court did not abuse its discretion and was not manifestly in error in assessing interest on the judgment entered against the husband at the rate of three percent per annum because the court found no authority holding it an abuse of discretion or manifest error for the chancellor to set interest at that rate. Brawdy v. Howell, 841 So. 2d 1175 (Miss. Ct. App. 2003).

With regard to child support, each unpaid monthly obligation begins to accrue interest at the legal rate, not from the time it may subsequently be formally reduced to judgment by a contempt or other appropriate enforcement proceeding, but from the time the obligation became due and owing and was not paid, and, further, such interest may not be abrogated by the chancellor on some perceived equitable ground. Dorr v. Dorr, 797 So. 2d 1008 (Miss. Ct. App. 2001).

6. Insurance cases.

Circuit court erred by denying an insurer's request for post-judgment interest because post-judgment interest was a statutory right and the award was mandatory. Therefore, remand was necessary for the judge to award fair and reasonable post-judgment interest. Piercon, Inc. v. Brierfield INS. Co., — So. 3d —, 2016 Miss. App. LEXIS 226 (Miss. Ct. App. Apr. 19, 2016).

Circuit court did not abuse its discretion by denying pre-judgment interest because, by itself, an insured's failure to demand pre-judgment interest in its complaints against an insurer was a sufficient reason to deny pre-judgment interest. Piercon, Inc. v. Brierfield INS. Co., — So. 3d —, 2016 Miss. App. LEXIS 226 (Miss. Ct. App. Apr. 19, 2016).

In a dispute between insurers arising from a collision, the secondary insurer (of a county) was entitled to reimbursement from the primary insurer (of a volunteer firefighter) for reasonable and necessary costs of defending the county; however, the trial court did not abuse its discretion in denying prejudgment interest. Indem. Ins. Co. of N. Am. v. Guidant Mut. Ins. Co., 99 So. 3d 142 (Miss. Oct. 4, 2012).

ATTORNEY GENERAL OPINIONS

Although civil judgments and decrees accumulate interest, there is no authority for adding interest to a criminal fine or assessment. Butani, Feb. 4, 1992, A.G. Op. #92-0053.

A judgment rendered on a contract automatically bears interest at the same rate evidenced by the contract; on all other judgments or on a judgment rendered on a contract that is silent as to an interest rate, the justice court judge has the authority to set a fair rate of interest to be earned on that judgment; however, if a judge does not set any interest to be earned by a judgment, it is implied that such a judgment does not earn any interest. Aldridge, August 28, 1998, A.G. Op. #98-0507.

RESEARCH REFERENCES

ALR. Date of verdict or date of entry of judgment thereon as beginning of interest period on judgment. 1 A.L.R.2d 479.

Recovery of interest on claim against a governmental unit in absence of provision in contract or express statutory provision. 24 A.L.R.2d 928.

Interest on probate court decree allowing claim against estate or making allowance for services. 54 A.L.R.2d 814.

Right to interest, pending appeal, of judgment creditor appealing unsuccessfully on ground of inadequacy. 15 A.L.R.3d 411.

Running of interest on judgment where both parties appeal. 11 A.L.R.4th 1099.

Validity and construction of state statute or rule allowing or changing rate of prejudgment interest in tort actions. 40 A.L.R.4th 147.

Am Jur. 44B Am. Jur. 2d, Interest and Usury § 38 et seq.

CJS. 47 C.J.S., Interest and Usury; Consumer Credit §§ 99-103.

Law Reviews. 1983 Mississippi Supreme Court Review: Statutory damages. 54 Miss. L. J. 79, March 1984.

Jackson, Legislative reform of statutes of limitations in Mississippi: proposed interpretations, possible problems. 9 Miss College LR 231, Spring 1989.

Practice References. Young, Trial Handbook for Mississippi Lawyers §§ 32:15, 37:5.

§ 75-17-9. Partial payments applied.

When partial payments are made, the interest that has accrued to the time of payment, if any, shall be first paid, and the residue of such partial payment shall be placed to the payment of the principal, except that the parties may agree in writing that such partial payment, or any portion thereof, shall be applied first to the payment of principal, in which case the residue shall be applied to the payment of interest that has accrued to the time of payment.

SOURCES: Codes, Hutchinson's 1848, ch. 47, art. 7 (57); 1857, ch. 50, art. 4; 1871, § 2282; 1880, § 1144; 1892, § 2351; 1906, § 2681; Hemingway's 1917, § 2079; 1930, § 1950; 1942, § 40; Laws, 1987, ch. 387, eff from and after July 1, 1987.

Cross References — Renewals and partial payments under pawnbrokers law, see § 75-67-39.

Small loan regulatory law, see § 75-67-101 et seq.

JUDICIAL DECISIONS

1. In general.
2. Particular applications.

1. In general.

Under Miss Code § 75-17-9, debtor's partial payments, if any, should be applied first to interest accrued on its indebtedness to date partial payment was received, and then to principal amount owing on debt. Southern Natural Gas Co. v. Pursue Energy, 781 F.2d 1079 (5th Cir. 1986).

Even if debtor had right at common law to direct his payments between principal and interest, that right has been abrogated by Miss Code § 75-17-9, which must be applied as it is written. Southern Natural Gas Co. v. Pursue Energy, 781 F.2d 1079 (5th Cir. 1986).

A note promising to pay to the named payee or order a stated sum at fixed times is negotiable on its face, and governed by the Negotiable Instruments Law though bearing limited indorsements. Fish Meal Co. v. Brondum, 242 Miss. 573, 135 So. 2d 825 (1961).

Courts apply payments most beneficially for the debtor, where there is no agreement between creditor and debtor as to application. Sunflower County v. Bank of Drew, 136 Miss. 191, 101 So. 192 (1924).

Partial payments are applied first to the interest when the same equals or exceeds the interest accrued, not before. Brooks v. Robinson, 54 Miss. 272 (1876).

2. Particular applications.

Where at the time two lump sum payments were made none of the instalment payments were barred, the proceeds of the lump sum payments should have been applied first to the payment of the interest accrued on the indebtedness to the date of the receipt of such partial payments, and the residue of such partial payments should have been applied to the payment of the oldest unpaid instalments of the indebtedness. Freeman v. Truitt, 238 Miss. 623, 119 So. 2d 765 (1960).

Where plaintiff's indebtedness to defendant bank was to be scaled down to $2350, pursuant to an agreement under which a Federal land bank granted plaintiff's application for a loan, but defendant bank took a new note for $2800, the true balance owing by plaintiff at the time of the agreement was $2350, and, as provided by this section [Code 1942, § 40], subsequent payments by plaintiff should be credited first to interest and the balance applied to the principal in ascertaining the amount due the defendant bank. Jones v. Hernando Bank, 194 Miss. 474, 13 So. 2d 31 (1943).

Payment to recompense creditor for interest paid by him after extending due date held to be a violation of law authorizing the forfeiture of interest on exacting more than six per cent; A cause of action to recover usurious or illegal interest does not accrue until payment of the principal of the debt. Beck v. Tucker, 147 Miss. 401, 113 So. 209 (1927).

The payment of maximum rate of interest before due held not to constitute usury. Beck v. Tucker, 147 Miss. 401, 113 So. 209 (1927).

This section was applicable to the partial payment of a judgment bearing interest. Meek v. Alexander, 137 Miss. 117, 102 So. 69 (1924).

Damages of five per centum allowed by statute upon the affirmance of a judgment would be calculated on the amount of the judgment rendered by the trial court, and not on the balance remaining after the partial payment of the judgment with the reservation of the right to review the entire judgment. Meek v. Alexander, 137 Miss. 117, 102 So. 69 (1924).

Where partial payments are made, interest should be computed on the principal debt to the date of the first payment, where this equals or exceeds the amount of the interest then due, and this sum should then be deducted from the aggregate of the principal and interest, and the process repeated as to successive payments. Where the payment does not equal or exceed the amount of interest due at the time when it is made, interest on the first principal should be computed until such time as the aggregate partial payments made equal or exceed the amount of interest due when the payment was made, which, with prior payments, equals or exceeds the accrued interest, and such aggregate should then be deducted from the sum of the original principal and accrued interest, the balance constituting a new principal. Kimbrough v. Carter, 129 Miss. 337, 92 So. 228 (1922).

Where land was sold on the deferred payment plan, a series of notes being given, and it was provided that interest on all of the notes should be payable annually, and that the purchaser might sell timber from the lands and apply the proceeds on the notes, payments thus made should be applied first to the accrued interest, and the balance to the payment of the principal. Tonkel v. Shields, 125 Miss. 461, 87 So. 646 (1921).

RESEARCH REFERENCES

Am Jur. 44B Am. Jur. 2d, Interest and Usury § 72.

10 Am. Jur. Legal Forms 2d, Interest and Usury §§ 150:8-150:10 (periodic interest payments).

§ 75-17-11. Rate of interest, amount of finance charge or rate of finance charge where specified to be paid at period of less than one year; payment earlier than final maturity; computation of interest upon prepayment of note; usurious rates; notes containing final balloon payment.

When any particular rate of interest per annum or amount of finance charge or rate of finance charge is specified in any contract, note or evidence of indebtedness, it shall not be construed as any increase of said rate of interest or amount of finance charge or rate of finance charge merely that the interest at the specified rate per annum or amount of finance charge or rate of finance charge is stipulated to be paid quarterly, or semiannually, or at any other period less than a year, nor shall the fact that the principal and interest or finance charge is paid at a date earlier than the final maturity date of the contract, note or evidence of indebtedness be taken as any increase of the rate per centum or amount of finance charge or rate of finance charge although paid for the whole period of the contract, note or evidence of indebtedness and regardless of whether or not there is a contractual right of prepayment. Upon prepayment of any contract, note or evidence of indebtedness with the agreement of the lender or holder of such contract, note or evidence of indebtedness before final maturity, whether voluntarily, involuntarily by acceleration or otherwise, and whether by cash, renewal or otherwise, any rebate of interest or finance charge may be computed by the sum of the digits method, commonly referred to as the Rule of 78's method, by the actuarial method, or by the simple interest method. The use of any such method to compute a rebate of interest or finance charge shall not be considered or result in any penalty, prepayment or otherwise, nor be deemed to increase the yield, annual percentage rate, amount of finance charge, rate of finance charge, amount of interest charge, or rate of interest charge. Any such contract, note, or evidence of indebtedness and all provisions thereof shall be valid for the amount of the principal, interest, and finance charges contracted for or received, and such contract, note or evidence of indebtedness shall not be held usurious. However, with respect to a note containing a final balloon payment provision originally payable to a bank and executed after July 1, 1990, the Rule of 78's method may not be used to compute any rebate of finance charges that may be due upon prepayment if the resulting yield would be usurious.

SOURCES: Codes, 1930, § 1951; 1942, § 41; Laws, 1926, ch. 179; Laws, 1954, ch. 322; Laws, 1990, ch. 481, § 1, eff from and after passage (approved March 27, 1990), and shall apply only to any contract, note or evidence of indebtedness originally executed after March 27, 1990.

Editor's Note — Laws of 1990, ch. 481, § 3, provides as follows:

"SECTION 3. If any provision of any section of this act or the application thereof to any circumstance or person or entity is held invalid, such invalidity shall not affect any other provision of that section or application of the section which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Cross References — Definition of finance charge as used in this section, see § 75-17-25.

JUDICIAL DECISIONS

1. In general.
2. Particular applications.

1. In general.

Statute providing that rate of interest specified in contract shall not be construed as increased by stipulation for payment of interest at periods of less than one year held not construable as curative statute with retrospective effect. Jefferson Std. Life Ins. Co. v. Ham, 178 Miss. 838, 173 So. 672 (1937).

Statutory provision that rate of interest specified in contract shall not be construed as increased by stipulation for payment in period less than one year held ineffective as mandatory direction for retroactive construction of statute, since courts rather than legislature must construe laws for past, although legislature may determine what law shall be. Jefferson Std. Life Ins. Co. v. Ham, 178 Miss. 838, 173 So. 672 (1937).

As respects retroactive operation of statute providing that rate of interest should not be construed as increased by stipulation for payment in period of less than one year, statute authorizing recovery of usurious interest creates right arising from contract and not right to recover "penalty." Jefferson Std. Life Ins. Co. v. Ham, 178 Miss. 838, 173 So. 672 (1937).

Statute for recovery of usurious interest, and statute providing rate of interest should not be construed as increased by stipulation for payment in period less than year, must be construed in pari materia in connection with Code provision that repeal of statutes thereby should not affect prior rights. Jefferson Std. Life Ins. Co. v. Dorsey, 178 Miss. 852, 173 So. 669 (1937).

Statute providing rate of interest shall not be construed as increased by stipulation for payment at periods less than year held prospective and not retroactive. Jefferson Std. Life Ins. Co. v. Dorsey, 178 Miss. 852, 173 So. 669 (1937).

2. Particular applications.

Holder of note due specified number of days after date, and not on or before that date, with interest at rate of 6% per annum, is entitled to charge maker interest at rate of 6% per annum to maturity of note notwithstanding fact that note is actually paid before maturity, and even though holder waives portion, transaction is still not usurious when holder does not receive as much as it is entitled to demand on due date. Hood v. First Nat'l Bank, 208 Miss. 658, 45 So. 2d 251 (1950).

Charge of $7.62 made up of interest at 6% on note for 30 days, service charge of $1.00 and transit time interest of $.94 for 5 days, paid May 31, 1946, on note dated May 1, 1946, due ninety days after date, is not usurious as holder of note collected less than it was entitled to demand. Hood v. First Nat'l Bank, 208 Miss. 658, 45 So. 2d 251 (1950).

A stipulation that notes given for interest shall bear interest after maturity is not usurious. Jefferson Std. Life Ins. Co. v. Dattel, 83 F.2d 504 (5th Cir. 1936), cert. denied, 299 U.S. 567, 57 S. Ct. 30, 81 L. Ed. 417 (1936).

RESEARCH REFERENCES

Am Jur. 10 Am. Jur. Legal Forms 2d, Interest and Usury § 150:5 et seq. (provisions as to fixed rate of interest).

10 Am. Jur. Legal Forms 2d, Interest and Usury § 150:13 et seq. (provisions as to variable rate and amount of interest).

10 Am. Jur. Legal Forms 2d, Interest and Usury §§ 150:24, 150:52 (provisions as to interest on interest).

10 Am. Jur. Legal Forms 2d, Interest and Usury § 150:77 (contract eliminating usurious part of note and mortgage).

Practice References. Commercial Finance Guide (Matthew Bender).

Commercial Loan Documentation Guide (Matthew Bender).

Consumer Credit Law Manual (Matthew Bender).

Kenneth M. Lapine, Analysis of Fair and Accurate Credit Transactions Act of 2003 (Matthew Bender).

Kenneth M. Lapine, Consumer Credit: Laws, Transactions and Forms (Matthew Bender).

§ 75-17-13. Liability for issuance of unsolicited credit cards; penalty for collection of excessive finance charge.

If any credit card is issued to a person who has not requested or accepted by use the issuance of such credit card, the issuer shall be liable to the person whose name appears on the credit card for any damages or expenses, or both, including attorney's fees, which the person incurs due to the use of such credit card without permission of the person to whom it is issued by any person other than the person to whom it is issued or members of his immediate family. Any person who shall willfully collect finance charges under a revolving charge agreement in excess of the maximum permitted under Section 75-17-19 shall be guilty of a misdemeanor, and, upon conviction, may be fined not more than Five Hundred Dollars ($500.00). Each account on which such excess finance charges shall be collected shall constitute a separate offense.

SOURCES: Laws, 1974, ch. 564, § 3; Laws, 1995, ch. 318, § 1, eff from and after passage (approved March 9, 1995).

Cross References — Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Credit card issuer's liability, under state laws, for wrongful billing, cancellation, dishonor, or disclosure. 53 A.L.R.4th 231.

§ 75-17-15. Small Loan Regulatory Law and Small Loan Privilege Tax Law Licensees; default charge; application of payments.

Any licensee under the provisions of the Small Loan Regulatory Law (Section 75-67-101 et seq.), and the Small Loan Privilege Tax Law (Section 75-67-201 et seq.), may contract for and receive a default charge not to exceed five percent (5%) of that portion of an installment which continues unpaid for ten (10) days or more following the date such payment is due, including Sundays and holidays. In no case shall such default charge exceed five dollars ($5.00). Such default charge shall not be collected more than once on the same installment. For the purpose of this section, payments shall be applied first to current installments and then to delinquent installments.

SOURCES: Laws, 1974, ch. 564, § 6, eff from and after July 1, 1974.

Editor's Note — According to a July 16, 1980, ruling from the office of the attorney general in response to a query from Alanson Turnbrough, § 75-17-15 is not superseded by § 75-17-1, nor do small loan lenders have the option of contracting on the basis of either of the two statutes. Section 75-17-15 is a specific statute controlling a specific type of transaction and is not superseded or amended by the general provisions of § 75-17-1.

Cross References — Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

RESEARCH REFERENCES

Practice References. Commercial Finance Guide (Matthew Bender).

Commercial Loan Documentation Guide (Matthew Bender).

Consumer Credit Law Manual (Matthew Bender).

Kenneth M. Lapine, Analysis of Fair and Accurate Credit Transactions Act of 2003 (Matthew Bender).

Kenneth M. Lapine, Consumer Credit: Laws, Transactions and Forms (Matthew Bender).

§ 75-17-17. Law governing loans made or credit extended prior to July 1, 1974.

Loans made and credit extended prior to July 1, 1974, shall continue to be governed by the provisions of laws governing such loans and extensions of credit which were in force at the time such loans or extensions of credit were made, including laws repealed hereby except that finance charges contracted for or received prior to July 1, 1974, shall not be unlawful if the finance charge contracted for or received conforms with the provisions of Chapter 564, Laws of 1974 or other law then in effect. Any loan or note renewed, refinanced, deferred or otherwise extended or altered on or after July 1, 1974, shall conform with the provisions of Sections 63-17-13, 75-17-1, 75-17-13 through 75-17-17, 75-67-127 and 75-67-217.

SOURCES: Laws, 1974, ch. 564, § 7, eff from and after July 1, 1974.

Editor's Note — Section 63-17-13, referred to in this section, was repealed by Laws of 1989, ch. 469, § 8, effective from and after July 1, 1989.

Cross References — Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

JUDICIAL DECISIONS

1. In general.

A loan consummated before July 1, 1974, but paid in full thereafter but before maturity, in the absence of a prepayment clause, was not altered so as to render this section applicable. The terms of this section do not include, and were not intended to include, the payment of a note in full, thereby terminating it. Ashley v. Cumberland Fin. Servs., Inc., 374 So. 2d 802 (Miss. 1979).

§ 75-17-19. Finance charges for credit extended pursuant to revolving charge agreement; annual fees for membership in credit card plan; late payment charges; billing and collection of finance charges; finance charges for closed end credit sales; issuer and debtor may agree to certain terms; 30-day's notice to debtor of any modification of terms.

(1) Notwithstanding any provision of law to the contrary, any retail seller and any lender or issuer of credit cards may contract for and receive a finance charge for credit sales of goods, services or merchandise certificates or for cash advanced or other credit extended pursuant to a revolving charge agreement by applying a periodic rate no greater than one and three-fourths percent (1-¾%) per month to:

(a) The average daily balance of the account, exclusive of finance charge, in each billing period;

(b) An amount that shall not exceed the balance of the account, exclusive of finance charge, on the first day of each billing period without adding purchases or miscellaneous debits to the account during the billing period; or

(c) Any balance of the account during each billing period which does not produce an amount of finance charge in excess of that permitted by (a) or (b).

(2) Notwithstanding the foregoing and any other provision of law to the contrary, any bank which is an issuer of credit cards may contract for and receive, in addition to any finance charges authorized by law, an annual fee for membership in a credit card plan pursuant to a revolving charge agreement and such fee shall not be considered a finance charge. Such fee shall not exceed Twelve Dollars ($12.00) per year for an account where the cardholder is a natural person. However, any credit card issuer which does so contract for an annual membership fee may, notwithstanding the provisions of subsection (1) of this section, contract for and receive a finance charge for credit sales of goods, services or merchandise certificates or for cash advanced or other credit extended pursuant to a revolving charge agreement by applying a periodic rate no greater than one and one-half percent (1-½%) per month to:

(a) The average daily balance of the account, exclusive of finance charge, in each billing period;

(b) An amount that shall not exceed the balance of the account, exclusive of finance charge, on the first day of each billing period without adding purchases or miscellaneous debits to the account during the billing period; or

(c) Any balance of the account during each billing period which does not produce an amount of finance charge in excess of that permitted by (a) or (b).

(3) Notwithstanding the foregoing and any other provision of law to the contrary, any bank, retail seller, lender or other issuer of credit cards may contract for and receive, in addition to any finance charges authorized by law, late payment charges in connection with the credit sales of goods, services or merchandise certificates or for cash advanced pursuant to a revolving charge agreement in such amounts and upon such terms and conditions as may be agreed to in writing by the bank, retail seller, lender or other issuer of credit cards and the borrower or debtor, and such charges and fees shall not be considered a finance charge.

(4) No finance charge may be charged or collected for purchases made by the use of credit cards or credit sales of goods or services or merchandise certificates if the outstanding balance of the account existing on the first day of the billing statement where such purchases initially appear is paid in full within one (1) month after such billing statement date. If a finance charge is otherwise due and the amount of the finance charge so computed shall be less than Fifty Cents (50¢) for any such month, a finance charge of Fifty Cents (50¢) for any such month may be charged, received and collected. Any payment made pursuant to a revolving charge agreement shall be applied first to any finance charge shown to be due on the billing statement, next to repayment of cash advanced or other credit extended, and finally to the chronological repayment of purchases of goods, services or merchandise certificates. The billing statement shall not state that Mississippi law requires the imposition of a finance charge. The term "month" as used in this subsection and in subsections (1) and (2) of this section means either (a) a calendar month or (b) a minimum of thirty

(30) consecutive calendar days, or (c) the number of days elapsing between the same numerical calendar day of successive calendar months, or (d) a number of days which does not vary by more than four (4) days from such period nor result in more than twelve (12) billing periods per year. "Revolving charge agreement" means an agreement by the terms of which retail sellers may sell goods, services, merchandise certificates, or by which a lender or issuer finances the purchase of goods or services or by which a lender makes cash advances, by the use of credit cards or otherwise, pursuant to which the amount financed is payable either within a stated period or in installments over a period of time, and the terms of which may provide for finance charges to be assessed on the unpaid balance as it exists from time to time; the term "revolving charge agreement" does not include the lending of money evidenced by a promissory note. The term "cash advances" includes credit extended by a lender to a borrower, or to any other person for the account of a borrower, pursuant to a written agreement, by the use of checks, drafts or other similar instruments.

(5) Notwithstanding the foregoing and any other provision of law to the contrary, any retail seller may contract for and receive a finance charge for closed end credit sales of goods, tangible property or services, other than pursuant to a revolving charge agreement, which will result in a yield not to exceed the following annual percentage rates calculated according to the actuarial method:

(a) Twenty-four percent (24%) per annum on that part of the unpaid balance of the amount financed which is Two Thousand Five Hundred Dollars ($2,500.00) or less; and

(b) Twenty-one percent (21%) per annum on that part of the unpaid balance of the amount financed which is more than Two Thousand Five Hundred Dollars ($2,500.00).

(6) Notwithstanding the foregoing and any other provisions of law to the contrary, any bank, retail seller, lender or other issuer of credit cards may provide in the written credit card agreement for such products, services, charges and fees as the bank, retail seller, lender or other issuer of credit cards and the debtor may agree upon (excluding, however, the finance charges provided for in subsection (1) of this section), and such other terms and conditions as the bank, retail seller, lender or other issuer of credit cards and the debtor may agree upon from time to time, and the costs associated with those products, services, charges and fees shall not be considered a finance charge or an annual fee. If any bank, retail seller, lender or other issuer of credit cards desires to modify in any respect any term of the credit card account, it shall first provide at least thirty (30) days' prior written notice of the modification to the debtor. In providing that notice, the bank, retail seller, lender or other issuer of credit cards shall advise the debtor in writing that the debtor has the option (a) to surrender the credit card, in which case the debtor shall have the right to continue to pay off the credit card account in the same manner and under the same terms and conditions as then in effect; or (b) to hold the credit card after the thirty-day period has elapsed, or to use the credit

card during that period, either of which shall constitute the debtor's consent to the modification.

SOURCES: Laws, 1986, ch. 510, § 2; Laws, 1990, ch. 550, § 1; Laws, 2000, ch. 517, § 1, eff from and after July 1, 2000.

Editor's Note — Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Cross References — Penalty for collection of finance charges in excess of maximum permitted under this section, see § 75-17-13.

Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

Federal Aspects — Provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, see 12 USCS §§ 1735f-7 note, 86a, 1831d, and 1785, respectively.

RESEARCH REFERENCES

ALR. Validity and construction of revolving charge account contract or plan. 41 A.L.R.3d 682.

Construction and effect of Uniform Consumer Credit Code. 86 A.L.R.3d 317.

Credit card issuer's liability, under state laws, for wrongful billing, cancellation, dishonor, or disclosure. 53 A.L.R.4th 231.

Computation of service or interest charge on bank credit cards as usurious under National Bank Act (12 USCS § 85). 38 A.L.R. Fed. 805.

What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (15 USCS § 1605(a)) or applicable regulations. 46 A.L.R. Fed. 657.

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection §§ 25-30.

24 Am. Jur. Pl & Pr Forms (Rev), Truth in Lending and Consumer Credit Protection, Forms 31-33 (complaint alleging failure to disclose entire amount of finance charge).

24 Am. Jur. Pl & Pr Forms (Rev), Truth in Lending and Consumer Credit Protection, Forms 61-80 (pleadings relative to alleged failure to make required disclosures in closed end sale).

5A Am. Jur. Legal Forms 2d (Rev), Consumer Credit Protection Acts § 66:5 et seq (disclosure requirements).

CJS. 47 C.J.S., Interest and Usury; Consumer Credit § 426 et seq.

Practice References. Commercial Finance Guide (Matthew Bender).

Commercial Loan Documentation Guide (Matthew Bender).

Consumer Credit Law Manual (Matthew Bender).

Kenneth M. Lapine, Consumer Credit: Laws, Transactions and Forms (Matthew Bender).

§ 75-17-21. Maximum finance charges by licensees under Small Loan Regulatory Law and Small Loan Privilege Tax Law; lender option to use rates under this section or Section 75-67-181.

(1) For any consumer installment loan that a licensee under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law makes, the

licensee has the option to either lend at the rates and fees indicated under this section or at the rates and charges authorized under Section 75-67-181. Except as provided in Section 75-67-181, but notwithstanding any other provision of law to the contrary, the maximum finance charge which may be contracted for and received for any loan or extension of credit made by a licensee under the Small Loan Regulatory Law (Section 75-67-101 et seq.) and the Small Loan Privilege Tax Law (Section 75-67-201 et seq.) may result in a yield not to exceed the following annual percentage rates calculated according to the actuarial method:

(a) Thirty-six percent (36%) per annum for the portion of the unpaid balance of the amount financed that is not greater than One Thousand Dollars ($1,000.00);

(b) Thirty-three percent (33%) per annum for the portion of the unpaid balance of the amount financed in excess of One Thousand Dollars ($1,000.00) but not greater than Two Thousand Five Hundred Dollars ($2,500.00);

(c) Twenty-four percent (24%) per annum for the portion of the unpaid balance of the amount financed in excess of Two Thousand Five Hundred Dollars ($2,500.00) but not greater than Five Thousand Dollars ($5,000.00);

(d) Fourteen percent (14%) per annum for the portion of the unpaid balance of the amount financed in excess of Five Thousand Dollars ($5,000.00).

(2) As an alternative and in lieu of the rates established in paragraphs (a), (b), (c) and (d) of subsection (1), on loans in an amount of Twenty-five Thousand Dollars ($25,000.00) or more, a licensee may contract for and receive a maximum finance charge which will result in a yield not to exceed an annual percentage rate, calculated according to the actuarial method, of eighteen percent (18%) per annum on the unpaid balance of the amount financed.

(3) A licensee choosing to lend at the rates indicated under this section may contract for and charge a closing fee as follows:

(a) For loans in the amount of Ten Thousand Dollars ($10,000.00) or less, four percent (4%) of the total payments due on the loan or Twenty-five Dollars ($25.00), whichever is greater;

(b) For loans in an amount greater than Ten Thousand Dollars ($10,000.00), a maximum charge of Five Hundred Dollars ($500.00).

Such closing fee shall not be part of the finance charge.

(4) The rates set forth in paragraph (a) of subsection (1) may be increased by the number of percentage points by which the discount rate, excluding any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the lender is located exceeds eight percent (8%), and the rates set forth in paragraphs (b), (c) and (d) of subsection (1) may be increased by the number of percentage points by which the discount rate, excluding any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the lender is located exceeds ten percent (10%).

(5) Except as provided in Section 75-67-181, the finance charges authorized in this section are the maximum rates which may be contracted for or

received for any loan or extension of credit made by a licensee under the Small Loan Regulatory Law (Section 75-67-101 et seq.), and the Small Loan Privilege Tax Law (Section 75-67-201 et seq.). Nothing in this section shall prohibit lending money or handling, negotiating or arranging loans for a finance charge that is less than that specified herein. This section does not limit or restrict the manner of contracting for the finance charge, whether by way of add-on, discount or otherwise, so long as the annual percentage rate of the finance charge does not exceed that permitted by this section or Section 75-67-181.

SOURCES: Laws, 1986, ch. 510, § 3; Laws, 2005, ch. 438, § 1; Laws, 2016, ch. 301, § 8, eff from and after July 1, 2016.

Editor's Note — Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Amendment Notes — The 2016 amendment, in (1), added the first sentence and the exception, and inserted "other" preceding "provision of law"; inserted "choosing to lend at the rates indicated under this section" in (3); designated the formerly undesignated last paragraph (5), and therein added the exception at the beginning, and "or Section 75-67-181" at the end.

Cross References — Provision that a licensee under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law may receive finance charges and late payment charges regardless of the purpose for which an extension of credit is made, see § 75-17-25.

Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

Penalties for imposition of excessive finance charges, see § 75-67-119.

Federal Aspects — Provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, see 12 USCS §§ 1735f-7 note, 86a, 1831d, and 1785, respectively.

ATTORNEY GENERAL OPINIONS

The rates provided for in the Small Loan Regulatory Act (Section 75-67-101 et seq.) and the Small Loan Privilege Act (Section 75-56-201 et seq.) are specifically set out in Section 75-17-21 and that these rates prevail and control the finance charges and interest that may be charged for all loans made by small loan lenders, regardless of whether the loans made by the small loan lenders are secured by motor vehicles or factory manufactured moveable homes. Napier, November 15, 1996, A.G. Op. #96-0728.

RESEARCH REFERENCES

ALR. Construction and effect of Uniform Consumer Credit Code. 86 A.L.R.3d 317.

Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

Validity, construction, and application of Consumer Credit Protection Act provisions (18 USCS §§ 891-896) prohibiting extortionate credit transaction. 7 A.L.R. Fed. 950.

Computation of service or interest charge on bank credit cards as usurious under National Bank Act (12 USCS § 85). 38 A.L.R. Fed. 805.

What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (15 USCS § 1605(a)) or applicable regulations. 46 A.L.R. Fed. 657.

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection §§ 25-30.

24 Am. Jur. Pl & Pr Forms (Rev), Truth in Lending and Consumer Credit Protection, Forms 31-33 (complaint alleging failure to disclose entire amount of finance charge).

5A Am. Jur. Legal Forms 2d (Rev), Consumer Credit Protection Acts § 66:5 et seq. (disclosure requirements).

CJS. 47 C.J.S., Interest and Usury; Consumer Credit § 426 et seq.

§ 75-17-23. Maximum finance charges in connection with sales of factory manufactured moveable homes.

Notwithstanding any provision of law to the contrary, the maximum finance charge which may be contracted for or received for any loan or extension of credit made by any lender or by any retail seller in connection with sales of factory manufactured moveable homes may result in a yield not to exceed the following annual percentage rates calculated according to the actuarial method:

(a) Twenty-five percent (25%) per annum on that part of the unpaid balance of the amount financed which does not exceed One Thousand Dollars ($1,000.00);

(b) Eighteen percent (18%) per annum on that part of the unpaid balance of the amount financed which is more than One Thousand Dollars ($1,000.00) but does not exceed Two Thousand Five Hundred Dollars ($2,500.00);

(c) The greater of fifteen percent (15%) per annum or five percent (5%) per annum above the discount rate, excluding any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the lender or retail seller is located, on that part of the unpaid balance of the amount financed which is more than Two Thousand Five Hundred Dollars ($2,500.00).

SOURCES: Laws, 1986, ch. 510, § 4, eff from and after July 1, 1986.

Editor's Note — Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Cross References — Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

Federal Aspects — Provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, see 12 USCS §§ 1735f-7 note, 86a, 1831d, and 1785, respectively.

RESEARCH REFERENCES

ALR. Construction and effect of Uniform Consumer Credit Code. 86 A.L.R.3d 317.

Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (15 USCS § 1605(a)) or applicable regulations. 46 A.L.R. Fed. 657.

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 25-30.

24 Am. Jur. Pl & Pr Forms (Rev), Truth in Lending and Consumer Credit Protection, Forms 31-33 (complaint alleging failure to disclose entire amount of finance charge).

5A Am. Jur. Legal Forms 2d, Consumer Credit Protection Acts § 66:5 et seq. (disclosure requirements).

CJS. 47 C.J.S., Interest and Usury; Consumer Credit § 426 et seq.

§ 75-17-25. Meaning of "finance charge"; exclusion of prepayment penalties and default charges; effect of excessive finance charge.

The term "finance charge" as used in this section, Sections 63-19-43, 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17, 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 75-67-123, 75-67-127, 75-67-181 and 75-67-217 means the amount or rate paid or payable, directly or indirectly, by a debtor for receiving a loan or incident to or as a condition of the extension of credit, including, but not limited to, interest, brokerage fees, finance charges, loan fees, discount, points, service charges, transaction charges, activity charges, carrying charges, time price differential, finder's fees or any other cost or expense to the debtor for services rendered or to be rendered to the debtor in making, arranging or negotiating a loan of money or an extension of credit and for the accounting, guaranteeing, endorsing, collecting and other actual services rendered by the lender; however, recording fees, motor vehicle title fees, attorney's fees, insurance premiums, fees or charges permitted to be charged under the provisions of Section 75-67-121, fees permitted to be charged under the provisions of Section 79-7-7, service charges as provided in Section 81-19-31, and with respect to a debt secured by an interest in land, bona fide closing costs and appraisal fees incidental to the transaction shall not be included in the finance charge. The term "finance charge," as used in this section and the sections enumerated above, shall not include any fees for the set up, establishment, processing or maintenance of a loan to a plan participant from a retirement plan intending to be tax-qualified (within the meaning of 26 USCS Section 401 et seq.) that are paid or payable directly or indirectly by the plan participant to the plan record keeper or third-party administrator.

Subject to the other provisions of this section, Sections 63-19-43, 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 75-67-127 and 75-67-217, the finance charge may be calculated on the assumption that the indebtedness will be discharged as it becomes due, and prepayment penalties and statutory default charges shall not be included in the finance charge. Nothing in Section 75-17-1 or Section 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 or 75-17-33 shall limit or restrict the manner of contracting for such finance charge, whether by way of add-on, discount or otherwise, so long as the annual percentage rate does not exceed that permitted by law. If a greater finance charge than that authorized by applicable law shall be stipulated for or received in any case, all interest and finance charges shall be forfeited, and may be recovered back, whether the contract be executed or executory. If a finance charge be contracted for or received that exceeds the maximum authorized by law by more than one hundred percent (100%), the principal and all finance charges shall be forfeited and any amount paid may be recovered by suit. The provisions of this section, Section 75-17-1 and Sections 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33 shall not restrict the extension of credit pursuant to any other applicable law. A licensee under the Small Loan Regulatory Law (Section 75-67-101 et seq.), and the Small Loan Privilege Tax Law (Section 75-67-201 et seq.), may contract for and receive finance charges as authorized by Section 75-17-21 or 75-67-181, and the late payment charge as authorized by Section 75-17-27, regardless of the purpose for which the loan or other extension of credit is made.

SOURCES: Laws, 1986, ch. 510, § 5; Laws, 1990, ch. 481, § 2; Laws, 2005, ch. 425, § 1; Laws, 2016, ch. 301, § 9, eff from and after July 1, 2016.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed “Sections 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, or 75-17-33” to “Section 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, or 75-17-33” and “all interest and finance charge shall be forfeited” to “all interest and finance charges shall be forfeited” in the second paragraph. The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor’s Note — Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

“SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi.”

Amendment Notes — The 2016 amendment, in the first paragraph, inserted “75-67-123” and “75-67-181” near the beginning of the first sentence, and inserted “fees or charges permitted to be charged under the provisions of Section 75-67-121” preceding “fees permitted to be charged under the provisions” near the end; inserted “or 75-67-181” following “Section 75-17-21” in the last sentence of the second paragraph; and made minor stylistic changes.

Cross References — Service charge paid to licensed consumer loan broker not to be construed as a finance charge or interest, see § 81-19-31.

Federal Aspects — Provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, see 12 USCS §§ 1735f-7 note, 86a, 1831d, 1730g, and 1785, respectively.

JUDICIAL DECISIONS

1. In general.
2. Non-sufficient fund fees.

1. In general.

Statute setting forth maximum charges for late payments applies to payments of carrying charges to condominium association when unit owner is personally liable for payment and when such payments are secured by foreclosable lien on owner's dwelling unit. Rea v. Breakers Association, 674 So. 2d 496 (Miss. 1996).

Condominium association's imposition of 20% per month late charge on delinquent monthly carrying charges, with unpaid late charges added to principal amount due, violated usury statute imposing 4% maximum on late payment charges; as association had foreclosable lien against unit for unpaid late charges there was mortgagor-mortgagee relationship between unit owner and association, to which statute applied. Rea v. Breakers Association, 674 So. 2d 496 (Miss. 1996).

2. Non-sufficient fund fees.

Non-sufficient fund processing fees do not constitute fees charged for receiving a loan or incident to or as a condition of the extension of credit within the meaning of the statute. Terrell v. Hancock Bank, 7 F. Supp. 2d 812 (S.D. Miss. 1998).

RESEARCH REFERENCES

ALR. Construction and effect of Uniform Consumer Credit Code. 86 A.L.R.3d 317.

Credit card issuer's liability, under state laws, for wrongful billing, cancellation, dishonor, or disclosure. 53 A.L.R.4th 231.

Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

Validity, construction, and application of Consumer Credit Protection Act provisions (18 USCS §§ 891-896) prohibiting extortionate credit transaction. 7 A.L.R. Fed. 950.

Computation of service or interest charge on bank credit cards as usurious under National Bank Act (12 USCS § 85). 38 A.L.R. Fed. 805.

What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (15 USCS § 1605(a)) or applicable regulations. 46 A.L.R. Fed. 657.

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 25-30.

24 Am. Jur. Pl & Pr Forms (Rev), Truth in Lending and Consumer Credit Protection, Forms 31-33.

5A Am. Jur. Legal Forms 2d, Consumer Credit Protection Acts § 66:5 et seq.

CJS. 47 C.J.S., Interest and Usury; Consumer Credit § 426 et seq.

Law Reviews. Williamson and Redfern, Lender liability in Mississippi: Part II loan commitments and agreements. 59 Miss. L. J. 71, Spring, 1989.

Practice References. Commercial Finance Guide (Matthew Bender).

Commercial Loan Documentation Guide (Matthew Bender).

Consumer Credit Law Manual (Matthew Bender).

Kenneth M. Lapine, Consumer Credit: Laws, Transactions and Forms (Matthew Bender).

Harold Weisblatt, Checks, Drafts, and Notes (Matthew Bender).

§ 75-17-27. Late payment charges.

A late payment charge, not exceeding Five Dollars ($5.00) or four percent (4%) of the amount of any delinquency, whichever is greater, if contracted for in writing, shall not be considered a finance charge, but no such charge shall be made unless such delinquency is more than fifteen (15) days past due; provided, however, that such late payment charge may be collected only one (1) time on a specific installment and no late payment charge may be collected on a partial payment resulting from the deduction of a late payment charge from a regular scheduled payment. On loans of One Hundred Thousand Dollars ($100,000.00) or less having a stated maturity of five (5) years or less, such late payment charge shall in no event exceed Fifty Dollars ($50.00).

SOURCES: Laws of 1986, ch. 510, § 6, eff from and after July 1, 1986.

Editor's Note — Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Cross References — Provision that a licensee under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law may receive finance charges and late payment charges regardless of the purpose for which an extension of credit is made, see § 75-17-25.

Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

Federal Aspects — Provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, see 12 USCS §§ 1735f-7 note, 86a, 1831d, and 1785, respectively.

JUDICIAL DECISIONS

1. In general.

A plain reading of the statute clearly indicates a grace period for the imposition of late fees on payments past due; however, the statute in no way supports the theory that this grace period affects due dates or the condition of default. Weems v. Transamerica Mortg. Co., 770 So. 2d 936 (Miss. 2000).

Statute setting forth maximum charges for late payments applies to payments of carrying charges to condominium association when unit owner is personally liable for payment and when such payments are secured by foreccloseable lien on owner's dwelling unit. Rea v. Breakers Association, 674 So. 2d 496 (Miss. 1996).

Condominium association's imposition of 20% per month late charge on delinquent monthly carrying charges, with unpaid late charges added to principal amount due, violated usury statute imposing 4% maximum on late payment charges; as association had foreclosеable lien against unit for unpaid late charges there was mortgagor-mortgagee relationship between unit owner and association, to which statute applied. Rea v. Breakers Association, 674 So. 2d 496 (Miss. 1996).

ATTORNEY GENERAL OPINIONS

Section 75-17-27 does not apply to a municipality as to its assessment of late charges on a delinquent water/sewer accounts. Baker, Nov. 8, 2002, A.G. Op. #02-0624.

RESEARCH REFERENCES

ALR. Validity and construction of provision imposing "late charge" or similar exaction for delay in making periodic payments on note, mortgage, or installment sale contract. 63 A.L.R.3d 50.

Construction and effect of Uniform Consumer Credit Code. 86 A.L.R.3d 317.

Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

Computation of service or interest charge on bank credit cards as usurious under National Bank Act (12 USCS § 85). 38 A.L.R. Fed. 805.

What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (15 USCS § 1605(a)) or applicable regulations. 46 A.L.R. Fed. 657.

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection §§ 26, 81.

24 Am. Jur. Pl & Pr Forms (Rev), Truth in Lending and Consumer Credit Protection, Forms 31-33.

5A Am. Jur. Legal Forms 2d, Consumer Credit Protection Acts § 66:5 et seq.

CJS. 47 C.J.S., Interest and Usury; Consumer Credit § 426 et seq.

Practice References. Commercial Finance Guide (Matthew Bender).

Commercial Loan Documentation Guide (Matthew Bender).

Consumer Credit Law Manual (Matthew Bender).

Kenneth M. Lapine, Consumer Credit: Laws, Transactions and Forms (Matthew Bender).

Harold Weisblatt, Checks, Drafts, and Notes (Matthew Bender).

§ 75-17-29. Prohibition against use of multiple agreements to obtain excessive finance charge.

No lender or other person shall use multiple notes, accounts, contracts or agreements with intent to obtain a higher finance charge than permitted by law. If a finance charge be stipulated for or received in any case in violation of this section, all interest and finance charges shall be forfeited.

SOURCES: Laws, 1986, ch. 510, § 7, eff from and after July 1, 1986.

Editor's Note — Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Cross References — Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

Federal Aspects — Provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, see 12 USCS §§ 1735f-7 note, 86a, 1831d, and 1785, respectively.

JUDICIAL DECISIONS

1. In general.

Mississippi law prohibits lenders from making multiple loans with the intent to obtain higher finance charges. Smith v. Tower Loan of Miss., Inc., 216 F.R.D. 338 (S.D. Miss. 2003), affirmed by 91 Fed. Appx. 952, 2004 U.S. App. LEXIS 4955 (5th Cir. Miss. 2004).

RESEARCH REFERENCES

ALR. Construction and effect of Uniform Consumer Credit Code. 86 A.L.R.3d 317.

What constitutes "fraudulent" or "unconscionable" agreement or conduct within meaning of state Consumer Credit Protection Act. 42 A.L.R.4th 293.

Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

Validity, construction, and application of Consumer Credit Protection Act provisions (18 USCS §§ 891-896) prohibiting extortionate credit transaction. 7 A.L.R. Fed. 950.

Computation of service or interest charge on bank credit cards as usurious under National Bank Act (12 USCS § 85). 38 A.L.R. Fed. 805.

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 343.

24 Am. Jur. Pl & Pr Forms (Rev), Truth in Lending and Consumer Credit Protection, Forms 151-154.

CJS. 47 C.J.S., Interest and Usury; Consumer Credit § 426 et seq.

§ 75-17-31. Limitations on prepayment penalties with respect to loans for certain real estate.

No lender or other person shall charge a sum or prepayment penalty for the prepayment of any note or evidence of a debt secured in whole or in part by lien on real estate greater than the following:

(a) Five percent (5%) of the unpaid principal balance if prepaid during the first year;

(b) Four percent (4%) of the unpaid principal balance if prepaid during the second year;

(c) Three percent (3%) of the unpaid principal balance if prepaid during the third year;

(d) Two percent (2%) of the unpaid principal balance if prepaid during the fourth year;

(e) One percent (1%) of the unpaid principal balance if prepaid during the fifth year;

(f) No penalty if prepaid more than five (5) years from date of the note creating the debt.

This section shall apply only to loans, the security for which is a lien on real estate comprising a single family dwelling or a single family condominium unit, or on real estate used primarily for agricultural or livestock purposes. This section shall not apply where a greater penalty is required by any law or regulation of the United States of America, or agency thereof. In addition, this section shall not apply to any agricultural loan made by an originator or a certified facility in accordance with 12 USCS Section 2279aa et seq. that is included in a pool for which the Federal Agricultural Mortgage Corporation has provided a guarantee.

SOURCES: Laws, 1986, ch. 510, § 8; Laws, 1995, ch. 317, § 1, eff from and after passage (approved March 9, 1995).

Editor's Note — Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Federal Aspects — Provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, see 12 USCS §§ 1735f-7 note, 86a, 1831d, 1730g, and 1785, respectively.

JUDICIAL DECISIONS

1. In general.

A lender was statutorily prohibited from computing a rebate of finance charges on a precomputed loan by the method of the rule of 78's, as provided in the promissory note, if the resulting yield to the lender on prepayment was greater than that specified in § 75-17-1(4) or exceeded the penalty allowed by § 75-17-1(12) (recodifed as § 75-17-31). When the borrowers elected to prepay the note, the lender was required to recalculate the amount of interest which it had earned over the term during which the borrowers actually had use of the borrowed money in order to come within § 75-17-1(4), limiting the bank to a specified "yield ... calculated according to the actuarial method." It was incumbent upon the lender to recalculate the interest by the actuarial method and not by the rule of 78's so as not to exceed the specified legal rate of "yield." Denley v. Peoples Bank, 553 So. 2d 494 (Miss. 1989).

Rule of 78th's method of computation in case of prepayment of loan by one licensed under Small Loan Privilege Tax Act, § 75-67-201 et seq., as authorized by provision of Small Loan Regulatory Act, § 75-67-127(1)(c), is not affected by general usury statute, § 75-17-31, where laws at issue originated in same enactment (Chapter 565, Laws, 1974) and are reasonably assumed to comprise rational and noncontradictory scheme, and where special and particular statutes control over general usury statute in event of conflicts between legislative provisions. Benoit v. United Cos. Mtg., Inc., 504 So. 2d 196 (Miss. 1987).

RESEARCH REFERENCES

ALR. Construction and effect of Uniform Consumer Credit Code. 86 A.L.R.3d 317.

Construction and effect as to interest due of real estate mortgage clause authorizing mortgagor to prepay principal debt. 86 A.L.R.3d 599.

Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

Am Jur. 55 Am. Jur. 2d, Mortgages § 306, 307.

CJS. 59 C.J.S., Mortgages §§ 569-572.

§ 75-17-33. Announcement of discount rates and indices by Commissioner of Banking and Consumer Finance; recording of maximum finance charge rates.

The Commissioner of Banking and Consumer Finance, upon any change in the discount rate on ninety-day commercial paper by the Federal Reserve bank of a Federal Reserve district of which this state is a part, shall (a) make an official announcement of the new discount rate on the same day as the change, or as soon thereafter as possible, (b) cause the dissemination of such announcement to the news media in such manner as he deems appropriate, and (c) file the same with the Commissioner of Insurance or his successor. The rate so determined shall be effective from the date of the official announcement of the new discount rate by the Commissioner of Banking and Consumer Finance. The Commissioner of Banking and Consumer Finance shall determine, on or before the twentieth day of each month, the index of market yields of the Monthly Twenty-Year Constant Maturity Index of Long-Term United States Government Bond Yields for the preceding calendar month and shall (a) make an official announcement of the index, (b) cause the dissemination of such announcement to the news media in such manner as he deems appropriate, and (c) file the same with the Commissioner of Insurance or his successor. The index so determined shall be effective on the first day of the next succeeding month.

In contracting for a finance charge pursuant to the provisions of Section 75-17-1 or Sections 75-17-21 and 75-17-23, any person shall be entitled to rely conclusively upon the most recent discount rate or index officially announced by the Commissioner of Banking and Consumer Finance. The Commissioner of Banking and Consumer Finance shall acquire, keep and maintain a separate record in which he shall note or post the maximum permissible rates of finance charges available under Section 75-17-1 and Sections 75-17-21 and 75-17-23. Each rate so determined shall be the maximum permissible rate of finance charge available under each particular section or subsection thereof, and when certified by the Commissioner of Banking and Consumer Finance shall be admissible in evidence or judicially noticed as the maximum permissible rate of finance charge under the provisions of that particular section or subsection.

SOURCES: Laws, 1986, ch. 510, § 9; Laws, 1994, ch. 622, § 157, eff from and after July 1, 1994.

Editor's Note — Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Cross References — Applicability of this section to motor vehicle finance charge limitations, see § 63-19-43.

Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

Commissioner of Banking and Consumer Finance generally, see § 81-1-61.

Commissioner of Savings Associations generally, see § 81-12-11.

Commissioner of Insurance generally, see § 83-1-3.

Federal Aspects — Provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, see 12 USCS §§ 1735f-7 note, 86a, 1831d, and 1785, respectively.

ATTORNEY GENERAL OPINIONS

Construing the mandates of this section in harmony and by implication, there is sufficient authority for the Commissioner of Banking and Consumer Finance to pronounce and establish an "equivalent index" using the Federal Funds Target Rate, less 50 basis points, in lieu of the now non-existent discount rate on ninety-day commercial established under the Federal Reserve System. Allison, Aug. 22, 2003, A.G. Op. #03-0444.

RESEARCH REFERENCES

ALR. Construction and effect of Uniform Consumer Credit Code. 86 A.L.R.3d 317.

Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (15 USCS § 1605(a)) or applicable regulations. 46 A.L.R. Fed. 657.

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 302.

CJS. 47 C.J.S., Interest and Usury; Consumer Credit § 426 et seq.

§ 75-17-35. Computation of interest on refunds of excess rates by public utilities.

Notwithstanding any provision of law to the contrary, the lawful rate of interest which shall be paid on a refund of excess rates by any public utility which has put rates into effect under bond, as provided for in Sections 77-3-39, 77-3-69 and 77-3-71, shall be computed from the date of collection until the date refunds are made and shall be equal to a rate which is two percent (2%) above the average discount rate for the total period under bond, excluding any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the public utility has its principal place of business.

SOURCES: Laws, 1986, ch. 510, § 10, eff from and after July 1, 1986.

Editor's Note — Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Federal Aspects — Provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, see 12 USCS §§ 1735f-7 note, 86a, 1831d, 1730g, and 1785, respectively.

RESEARCH REFERENCES

ALR. Construction and effect of Uniform Consumer Credit Code. 86 A.L.R.3d 317.

Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

Am Jur. 64 Am. Jur. 2d, Public Utilities § 45.

MAXIMUM INTEREST RATES ON PUBLIC BORROWING

SEC.	
75-17-101.	Maximum interest rate on general obligation and limited obligation tax bonds.
75-17-103.	Maximum interest rate on revenue bonds.
75-17-105.	Maximum interest rate on tax anticipation notes.
75-17-107.	Maximum interest rate on interim financing in anticipation of confirmed grant or loan.

§ 75-17-101. Maximum interest rate on general obligation and limited obligation tax bonds.

Unless otherwise provided by law, general obligation and limited obligation tax bonds issued by the State of Mississippi or a county, municipality or political subdivision thereof and described in Sections 19-9-19, 21-33-315, 21-41-43, 37-27-65, 37-29-103, 37-29-109, 37-29-113, 37-59-27, 41-13-21, 51-29-63, 51-31-61, 51-33-37, 51-33-39, 57-1-29, 59-3-11, 59-5-45, 59-7-19, 59-7-109, 59-9-37, 59-9-65, 59-13-9, 61-5-17 and 65-19-25, Mississippi Code of 1972, shall not bear a greater overall maximum interest rate to maturity than eleven percent (11%) per annum.

SOURCES: Laws, 1983, ch. 541, § 1; Laws, 1984, ch 506, § 12; Laws, 1985, ch. 477, § 16; Laws, 1986, ch. 384, § 2, eff from and after passage (approved March 24, 1986).

Cross References — Uniform system for issuance of negotiable notes or certificates of indebtedness, see § 17-21-51.

Bonds issued by counties, see § 19-9-19.

Bonds issued by municipalities, see § 21-33-315.

Bonds issued by municipalities for certain special improvements, see § 21-41-43.

Applicability of this section to interim financing in anticipation of borrowing under § 21-41-41 for improvements authorized by § 21-41-43, see § 21-41-45.

Provision that bonds issued under the Tax Increment Financing Act shall not bear a greater interest to maturity than allowed under this section, see § 21-45-9.

Application of this section to borrowing monies to create geographic information system and to prepare a multipurpose cadastre, see § 25-58-3.

Lease-purchase program for state agency equipment, see § 31-7-10.

Interest limit on lease-purchase agreements for equipment or furniture by state agencies, see § 31-7-13.

Applicability of this section to the interest rate on bonds issued to fund the Institute for Technology Development, see § 31-29-5.

Bonds for agricultural high schools and agricultural high school-junior colleges, see § 37-27-65.

Bonds issued by junior college districts, see §§ 37-29-103 and 37-29-109.

Refunding bonds issued by junior college districts, see § 37-29-113.

Bonds issued by a county or municipality on behalf of a school district, see § 37-59-27.

Issuance of general obligation bonds for the purpose of renovating or repairing facilities at various institutions of higher learning, the Education and Research center, and the Gulf Coast Research Laboratory, see § 37-101-313.

General obligation bonds issued under Mississippi Opportunity Loan Program Act not to bear interest higher than that established in this section, see § 37-145-25.

Bonds for community hospitals, nurses' homes, health centers, health departments, diagnostic or treatment centers, rehabilitation facilities, nursing homes, and related facilities, see § 41-13-21.

Bonds issued for the Pat Harrison Waterway District, see § 51-15-133.

Issuance of bonds by drainage district, see §§ 51-29-63, 51-31-61, 51-33-37, and 51-33-39.

Bonds issued for enterprises essential to the economic development and advancement of a municipality, see § 57-1-29.

General obligation bonds issued for local governments freight rail service projects not to bear interest exceeding limit set forth in this section, see § 57-44-13.

Bonds issued pursuant to the Mississippi Business Improvement Act, see § 57-61-25.

Application of this section to the rate of interest payable on bonds issued for the small enterprise development finance act, see § 57-71-25.

State bonds for ports, harbors, and waterways, see § 59-5-45.

Municipal bonds for harbor improvements, see §§ 59-3-11 and 59-7-19.

County bonds for certain port and harbor purposes, see §§ 59-7-109, 59-9-37, and 59-9-65.

Bonds for harbor improvements by coast counties, see § 59-13-9.

Bonds for development or improvement of airports or air navigation facilities, see § 61-5-17.

Interest rates on general obligation bonds for economic development highway fund, see §§ 65-4-29 and 65-4-31.

Bonds for purposes of separate road districts, see § 65-19-25.

Applicability of this section to the interest rate payable on funds borrowed for repairs and renovations at the Farmers' Market in Jackson, Hinds County, see § 69-1-47.

Provision that the Mississippi Fair Commission may borrow money at interest rates not in excess of that provided for in this section, see § 69-5-27.

Overall maximum interest rate on revenue bonds, see § 75-17-103.

Maximum interest rate on tax anticipation notes, see § 75-17-105.

Maximum interest rate on interim financing in anticipation of confirmed grant or loan, see § 75-17-107.

§ 75-17-103. Maximum interest rate on revenue bonds.

Unless otherwise provided by law, revenue bonds issued by the State of Mississippi or a county, municipality or political subdivision thereof and described in Sections 17-17-115, 19-5-183, 19-29-33, 21-27-45, 21-27-71, 21-27-179, 29-3-169, 37-101-91, 37-101-93, 41-13-21, 43-33-25, 43-33-537, 43-35-21, 49-17-105, 51-35-331, 57-7-3, 57-31-9, 59-7-417, 59-7-505, 59-9-41, 61-3-41, 61-5-17, 65-13-37, 69-5-15, 77-5-27 and 77-5-739, Mississippi Code of 1972, shall not bear a greater overall maximum interest rate to maturity than thirteen percent (13%) per annum.

SOURCES: Laws, 1983, ch. 541, § 2; Laws, 1984, ch. 506, § 13; Laws, 1985, ch. 477, § 17, eff from and after passage (approved April 8, 1985).

Editor's Note — Section 43-33-537, which pertained to the issuance of bonds by corporations and limitations as to time and amount of such bonds and is referred to in this section, was repealed by Laws of 1989, ch. 525, § 35, effective from and after September 1, 1989.

Cross References — Bonds for solid wastes disposal projects, see § 17-17-115.

Application of this section to revenue bonds issued by a county cooperative service district, see § 19-3-106.

Bonds issued by water, sewer, garbage disposal, and fire protection districts, see § 19-5-183.

Bonds issued by railroad authorities, see § 19-29-33.

Bonds issued with respect to municipally-owned utilities, see §§ 21-27-45 and 21-27-71.

Municipal bonds for sewage disposal systems, see § 21-27-179.

Bonds issued by sixteenth section development authority, see § 29-3-169.

Refunding revenue bonds issued by junior college districts, see § 31-15-23.

Bonds for construction or improvement of facilities of institutions of higher learning, see §§ 37-101-91 and 37-101-93.

Issuance of bonds by the Mississippi Educational Facilities Authority for Private, Nonprofit Institutions of Higher Learning, see § 37-104-17.

Student Loan Revenue Bonds issued under Mississippi Opportunity Loan Program Act not to bear interest in rate exceeding that established in this section, see § 37-145-47.

Bonds for community hospitals and other health-related facilities, see § 41-13-21.

Application of maximum interest rate fixed by this section to interest rate on bonds of Mississippi Hospital Equipment and Facilities Authority, see § 41-73-37.

Bonds issued by housing authorities, see § 43-33-25.

Interest rates on bonds issued by Mississippi Home Corporation, see § 43-33-731.

Municipal bonds for urban renewal projects, see § 43-35-21.

Applicability of the maximum interest rate prescribed by this section to bonds issued with respect to the establishment of municipal parking facilities, see § 43-35-203.

Bonds for pollution control facilities, see § 49-17-105.

Procedures for issuance of bonds; form, content, and terms of bonds under the Joint Water Management District, see § 51-8-37.

Issuance of bonds by district; sales price and other bond requirements, see § 51-9-205.

Bonds for purposes of urban flood control, see § 51-35-331.

Bonds for improvement or development of airport properties, see § 57-7-3.

Interest rates on bonds issued by Business Finance Corporation, see § 57-10-235.

Bonds issued by county industrial development authorities, see § 57-31-9.

Municipal bonds for port and harbor purposes, see § 59-7-417.

County bonds for port and harbor purposes, see §§ 59-7-505 and 59-9-41.

Issuance of bonds by airport authorities, see § 61-3-41.

Bonds for development or improvement of airports and air navigation facilities, see § 61-5-17.

Bonds issued by highway revenue and street bond authority, see § 65-13-37.

Bonds issued to finance erection, maintenance, etc. of sea walls not to bear higher interest than that specified in this section, ssee § 65-33-7.

Bonds for improvements to state fair grounds, see § 69-5-15.

Overall maximum interest rate on general obligation and limited obligation tax bonds, see § 75-17-101.

Maximum interest rate on tax anticipation notes, see § 75-17-105.

Maximum interest rate on interim financing in anticipation of confirmed grant or loan, see § 75-17-107.

Bonds issued by Mississippi Rural Electrification Authority, see § 77-5-27.

Bonds issued pursuant to the Joint Municipal Electric Power and Energy Law (§§ 77-5-701 through 77-5-783), see § 77-5-739.

Interest rates on bonds issued by the Municipal Gas Authority of Mississippi, see § 77-6-31.

§ 75-17-105. Maximum interest rate on tax anticipation notes.

Unless otherwise provided by law, tax anticipation notes and reappraisal notes issued by the State of Mississippi or a county, municipality or political subdivision thereof and described in Sections 19-9-27, 19-13-17, 21-33-325, 21-33-325.1, 27-39-325, 37-29-101, 37-29-267, 37-29-425, 37-41-93, 37-59-37, 37-59-39, 37-59-41, 51-7-15, 51-7-27, 51-29-5 and 51-31-73, Mississippi Code of 1972, shall bear interest at a rate not to exceed eleven percent (11%) per annum.

SOURCES: Laws, 1983, ch. 541, § 3; Laws, 1984, ch. 506, § 14; Laws, 1985, ch. 384; Laws, 1985, ch. 477, § 18; Laws, 2009, ch. 485, § 3, eff from and after passage (approved Apr. 6, 2009.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation deleted the word "Section" preceding "21-33-325.1." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — Section 37-59-39, which authorized boards of supervisors to borrow in anticipation of a county-wide school ad valorem tax levy and is referred to in this section, was repealed by Laws of 1986, ch. 492, § 181, effective from and after July 1, 1987.

Cross References — Borrowing by counties, see § 19-9-27.

Purchase of road equipment by county, see § 19-13-17.

Borrowing by municipalities, see § 21-33-325.

Reappraisal of property by county, see § 27-39-325.

Promissory notes issued by any school district within the Chickasaw cession territory for the purpose of purchasing school buses, see § 29-3-137.

Borrowing by board of trustees of junior college, see § 37-29-101.

Purchase of land or buildings for junior college, see § 37-29-267.

Borrowing by board of trustees of Mississippi Gulf Coast Junior College District, see § 37-29-425.

Purchase of school transportation equipment and related items, see § 37-41-93.

Borrowing in anticipation of school district taxes, see § 37-59-37.

Borrowing in anticipation of taxes for benefit of agricultural high schools, see § 37-59-41.

Loans by Regional Mental Health Commissions subject to limits of this section, see § 41-19-33.

Borrowing by water management district for certain plans and projects, see §§ 51-7-15 and 51-7-27.

Borrowing by temporary commissioners in connection with establishment of drainage district, see § 51-29-5.

Borrowing by commissioners of drainage district for construction and maintenance of drains, see § 51-31-73.

Overall maximum interest rate on general obligation and limited obligation tax bonds, see § 75-17-101.

Overall maximum interest rate on revenue bonds, see § 75-17-103.

Maximum interest rate on interim financing in anticipation of confirmed grant or loan, see § 75-17-107.

§ 75-17-107. Maximum interest rate on interim financing in anticipation of confirmed grant or loan.

Unless otherwise provided by law, interim financing in anticipation of a confirmed grant or loan by the State of Mississippi or a county, municipality or political subdivision thereof and described in Sections 19-9-28 and 21-33-326, Mississippi Code of 1972, shall bear interest at a rate not to exceed nine percent (9%) per annum.

SOURCES: Laws, 1983, ch. 541, § 4; Laws, 1984, ch. 506, § 15, eff from and after passage (approved May 15, 1984).

Cross References — Applicability of this section to interim financing of community hospitals and medical facilities, see § 41-13-24.

Overall maximum interest rate on general obligation and limited obligation tax bonds, see § 75-17-101.

Overall maximum interest rate on revenue bonds, see § 75-17-103.

Maximum interest rate on tax anticipation notes, see § 75-17-105.

CHAPTER 18

Revolving Charge Agreements; Credit Cards [Repealed]

§§ 75-18-1 through 75-18-11. Repealed.

Repealed by Laws, 1974, ch. 564, § 8, eff from and after July 1, 1974.
§ 75-18-1 through § 75-18-11. [En Laws 1972, ch. 662, §§ 1-4]

Editor's Note — Former §§ 75-18-1 through 75-18-11 authorized sellers, lenders and issuers of credit cards and their assignees to charge a maximum monthly finance charge of not more than 1-½% per month under revolving charge agreements, and provided a penalty for excess charges.

Provisions governing finance charges, revolving credit agreements and credit cards may now be found in Chapter 17 of Title 75.

CHAPTER 19

Seals

Sec.
75-19-1. Use of private seals dispensed with except as to corporations.
75-19-3. Instruments to be interpreted and enforced without reference to seals.
75-19-5. Scroll or seal, or the want of it, does not affect or vary rights.
75-19-7. Bonds of public officers and bonds in legal proceedings good without seal.

§ 75-19-1. Use of private seals dispensed with except as to corporations.

The use of private seals is dispensed with, except as to corporations; and all distinction between sealed and unsealed instruments, made by private persons, either as to the rights conferred by them or the remedies on them, is abolished.

SOURCES: Codes, 1880, § 993; 1892, § 4079; 1906, § 4631; Hemingway's 1917, § 7419; 1930, § 3302; 1942, § 260.

Cross References — Effect of seal on contract of sale, see § 75-2-203.

JUDICIAL DECISIONS

1. In general.

A writ without seal of the court or a statement of the fact, if there were no seal, is bad. Burton v. Cramer, 123 Miss. 848, 86 So. 578 (1920).

Absence of seal on corporation's assignment of deed of trust will not in equity affect title under trustee's sale of the land. West v. Union Naval Stores Co., 116 Miss. 743, 77 So. 609 (1918), error overruled, 117 Miss. 153, 77 So. 961 (1918).

Bank's general assignment for creditors without seal passed the equitable title. Dodwell v. Rieves, 114 Miss. 4, 74 So. 770 (1916).

Corporation's deed without seal will be enforced in a court of equity. Southern Plantations Co. v. Kennedy Heading Co., 104 Miss. 131, 61 So. 166 (1913).

An unsealed deed by a corporation is not available in ejectment to support plaintiff's title. Littelle v. Creek Lumber Co., 99 Miss. 241, 54 So. 841 (1911).

The written appointment of a substituted trustee in a deed of trust executed by a corporation, the beneficiary in the deed, need not be under seal. Brown v. British Am. Mtg. Co., 86 Miss. 388, 38 So. 312 (1905).

Where a deed of trust provided for the appointment of a substituted trustee, under the "hand and seal" of the beneficiary, an appointment in writing, signed by the beneficiary but not sealed, is invalid, notwithstanding this section. Sharpley v. Plant, 79 Miss. 175, 28 So. 799, 89 Am. St. R. 588 (1900).

In making a sale of its personal property a private corporation may act without a seal. Cary-Halidy Lumber Co. v. Cain, 70 Miss. 628, 13 So. 239 (1893).

This section is purely prospective; hence an unsealed deed executed prior to the Code of 1880 did not convey legal title, nor did it make any difference that the deed was executed in another state where seals were not required. The law of the place governs. Gibbs v. McGuire, 70 Miss. 646, 12 So. 829 (1893).

RESEARCH REFERENCES

Am Jur. 67 Am. Jur. 2d, Sales § 1 et seq.

16A Am. Jur. Legal Forms 2d, Seals § 230:9 (authentication of corporate seal).

§ 75-19-3. Instruments to be interpreted and enforced without reference to seals.

Any instrument of writing made and delivered by a private person without a seal or scroll, or other semblance or representation of a seal, shall be operative according to the intent of the maker, as expressed in the writing, in the same manner and as to full extent as if the seal of the maker were thereto affixed.

SOURCES: Codes, 1880, § 994; 1892, § 4080; 1906, § 4632; Hemingway's 1917, § 7420; 1930, § 3303; 1942, § 261.

JUDICIAL DECISIONS

1. In general.

Under this section a tax-collector's bond is good where his name appears in the body of the bond, filled out by himself and signed by his sureties, although not subscribed by the tax collector, the bond being delivered by him as his bond, accepted and approved. McLeod v. State, 69 Miss. 221, 13 So. 268 (1891).

§ 75-19-5. Scroll or seal, or the want of it, does not affect or vary rights.

The use of, or a failure to use, a seal or scroll, or other semblance or representation of a seal, by a private person in making an instrument, shall not in any manner affect it, nor in any way vary the rights of the parties to it.

SOURCES: Codes, 1880, § 995; 1892, § 4081; 1906, § 4633; Hemingway's 1917, § 7421; 1930, § 3304; 1942, § 262.

JUDICIAL DECISIONS

1. In general.

Where a conveyance in trust directs the cestui que trustent to appoint another trustee "under their hand and seal," if the trustee is unwilling to act, a substitutionary appointment must be under seal. Sharpley v. Plant, 79 Miss. 175, 28 So. 799, 89 Am. St. R. 588 (1900).

§ 75-19-7. Bonds of public officers and bonds in legal proceedings good without seal.

The bonds of all public officers, and all bonds in any legal proceeding, shall be valid and obligatory on all the signers, without a seal or representation of a seal, in the same manner as if duly sealed.

SOURCES: Codes, 1880, § 996; 1892, § 4082; 1906, § 4634; Hemingway's 1917, § 7422; 1930, § 3305; 1942, § 263.

Cross References — Effect of irregularity in bonds in legal proceedings and certain performance bonds, see § 11-1-25.

Bonds of public officers, generally, see §§ 25-1-13 through 25-1-33.

Effect of certain irregularities in bail bond, see § 99-5-23.

JUDICIAL DECISIONS

1. In general.

Where a conveyance in trust directs the cestui que trustent to appoint another trustee "under their hand and seal," if the trustee is unwilling to act, a substitutionary appointment must be under seal. Sharpley v. Plant, 79 Miss. 175, 28 So. 799, 89 Am. St. R. 588 (1900).

A tax collector's bond is good, where his name appears in the body of the bond, filled out by himself and signed by his sureties, although not subscribed by the tax collector, the bond being delivered by him as his bond, accepted and approved. McLeod v. State, 69 Miss. 221, 13 So. 268 (1891).

CHAPTER 21

Trusts and Combines in Restraint or Hindrance of Trade

SEC.
75-21-1. Trust and combine; defined.
75-21-3. Additional contracts or combinations not allowed by law.
75-21-5. Agricultural and other organizations not forbidden.
75-21-7. Penalty for violation of anti-trust laws.
75-21-9. Private persons and corporations may sue.
75-21-11. Contracts void.
75-21-13. Corporations not to purchase competing one.
75-21-15. To defraud in public contracts.
75-21-17. Moneys not collectible.
75-21-19. Proceedings for forfeiture of charter and right to do business.
75-21-21. Proceedings may be brought in county where trust and combine formed.
75-21-23. Proceedings may be brought in county where violation of law occurred.
75-21-25. Witness not to be excused from testifying.
75-21-27. Witness not liable to indictment or prosecution.
75-21-29. Books, records to be produced in court.
75-21-31. Penalty for failure to comply.
75-21-33. Right to examine books, records and accounts of corporations.
75-21-35. Corporations answerable for unlawful act.
75-21-37. Duties of district attorneys.
75-21-39. Application of chapter.

§ 75-21-1. Trust and combine; defined.

A trust or combine is a combination, contract, understanding or agreement, expressed or implied, between two or more persons, corporations or firms or association of persons or between any one or more of either with one or more of the others, when inimical to public welfare and the effect of which would be:

(a) To restrain trade;

(b) To limit, increase or reduce the price of a commodity;

(c) To limit, increase or reduce the production or output of a commodity;

(d) To hinder competition in the production, importation, manufacture, transportation, sale or purchase of a commodity;

(e) To engross or forestall a commodity;

(f) To issue, own or hold the certificate of stock of any trust and combine within the spirit of this chapter knowing it to be such at the time of the issue or the acquisition or holding such certificate; or

(g) To place the control to any extent of business or of the proceeds or earnings thereof, contrary to the spirit and meaning of this chapter, in the power of trustees, by whatever name called; or

(h) To enable or empower any other person than themselves, their proper officers, agents and employees to dictate or control the management of business, contrary to the spirit and meaning of this chapter; or

(i) To unite or pool interest in the importation, manufacture, production, transportation, or price of a commodity, contrary to the spirit and meaning of this chapter.

Any corporation, domestic or foreign, or any partnership, or individual, or other association, or person whatsoever, who are now, or shall hereafter create, enter into, become a member of, or a party to any trust or combine as hereinabove defined shall be deemed and adjudged guilty of a conspiracy to defraud and shall be subject to the penalties hereinafter provided. Any person, association of persons, corporation, or corporations, domestic or foreign, who shall be a party or belong to a trust and combine shall be guilty of crime and upon conviction thereof shall, for a first offense be fined in any sum not less than one hundred dollars ($100.00) nor more than five thousand dollars ($5,000.00) and for a second or subsequent offense not less than two hundred dollars ($200.00) nor more than ten thousand dollars ($10,000.00), and may be enjoined by a final decree of the chancery court, in a suit by the state on the relation of the attorney general, from the further prosecution of or doing of the acts constituting the trust and combine as defined in this chapter.

SOURCES: Codes, 1892, § 4437; 1906, § 5002; Hemingway's 1917, §§ 3281, 3282; 1930, § 3436; 1942, § 1088; Laws, 1908, chs. 88, 119; Laws, 1926, ch. 182.

Cross References — Constitutional provision relating to trusts, combinations and contracts inimical to public interest, see Miss Const Art. 7, § 198.

Rejection of bids on public contracts because of trust or combine, see § 19-13-113.

Purchase of school textbooks from trusts prohibited, see § 37-43-27.

Oil and gas pooling agreements, see § 53-3-7.

Unfair cigarette sales law, see § 75-23-1 et seq.

Contracts for books, magazines, etc., in violation of antitrust laws, see § 75-23-53.

Combinations of cotton ginners, see §§ 75-41-11 through 75-41-15.

Liquified gas products and appliances, see § 75-57-63.

Prohibition of unfair practices of electric power utilities, see § 77-5-501.

Regulation of insurance business practices, see §§ 83-5-29 through 83-5-51.

Criminal and civil liability for conspiracy in unlawful restraint of trade, see § 97-23-85.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Validity; effect of federal statutes.
2. Construction and application, generally.
3. Particular applications.
4. —Prosecution under statute.

1. Validity; effect of federal statutes.

The Attorney General's claims against manufacturers of infant formula for alleged violations of state antitrust statutes (§§ 75-21-1, 75-21-3 and 75-21-7) were not preempted by federal antitrust law. Moore ex rel. Miss. v. Abbott Lab., Inc., 900 F. Supp. 26 (S.D. Miss. 1995).

Act, harmless when done by one, may become public wrong when done by many acting in concert; and when it becomes object of conspiracy and operates in restraint of trade, police power of state may prohibit it without impairing liberty of contract. Wagley v. Colonial Baking Co., 208 Miss. 815, 45 So. 2d 717 (1950), error overruled, 46 So. 2d 925 (Miss. 1950).

Federal acts held not to interfere with state's power to punish railroad corporations for prior violations of its laws. State ex rel. Roberson v. Southern Ry., 126 Miss. 875, 89 So. 769 (1921).

Anti-trust law is not suspended by Lever Act; nor does enforcement deprive insurance companies of equal protection of law or of property without due process.

Nugent & Pullen v. Robertson, 126 Miss. 419, 88 So. 895 (1921).

Freedom from contract is not unreasonably abridged in violation of the Fourteenth Amendment by this provision as formerly contained in Code 1906, § 5002, which as construed by the supreme court of Mississippi condemns as a combination in restraint of trade an agreement between retail lumber dealers not to deal with any manufacturer or wholesale dealer who will sell direct to consumers in localities where such retailers conduct their business and keep a sufficient stock to meet demands and to inform each other of any such sale. Grenada Lumber Co. v. Mississippi, 217 U.S. 433, 30 S. Ct. 535, 54 L. Ed. 826 (1910).

2. Construction and application, generally.

Noerr-Pennington doctrine is applicable and a defense to claims brought under this section. Harrah's Vicksburg Corp. v. Pennebaker, 812 So. 2d 163 (Miss. 2001).

The restraint of trade statute has no application to boycotts to achieve political goals; therefore, in a proceeding for an injunction and for damages arising out of an economic boycott by a civil rights organization and other defendants to achieve political ends, the chancellor erred in allowing a penalty of $500 to each of the 12 complainants pursuant to § 75-21-9. NAACP v. Claiborne Hdwe. Co., 393 So. 2d 1290 (Miss. 1980), amended, 405 So. 2d 115 (Miss. 1981), rev'd on other grounds, 458 U.S. 886, 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982), reh'g denied, 459 U.S. 898, 103 S. Ct. 199, 74 L. Ed. 2d 160 (1982).

Legislature has declared the forbidden things, listed in statute, to be inimical to public welfare, and if proof be sufficiently made of transgression of statutory prohibitions, such act is intrinsically inimical to public welfare without further or special proof of result beyond definitions of statute, or deduction by courts that proven violations are or are not inimical to public welfare. Wagley v. Colonial Baking Co., 208 Miss. 815, 45 So. 2d 717 (1950), error overruled, 46 So. 2d 925 (Miss. 1950).

Contract in restraint of trade is not invalid, unless inimical to public welfare. State ex rel. Knox v. Edward Hines Lumber Co., 150 Miss. 1, 115 So. 598 (1928).

Trusts, combinations, etc., although they may result in restraint of trade, are not unlawful, unless hostile to public welfare. Jackson v. Price, 140 Miss. 249, 105 So. 538 (1925).

Law prohibiting contracts in restraint of trade held applicable only to those which in their effect are inimical to public welfare. Brown v. Staple Cotton Coop. Ass'n, 132 Miss. 859, 96 So. 849 (1923).

Co-operative marketing act held persuasive as to what contracts not inimical to public welfare before adoption. Brown v. Staple Cotton Coop. Ass'n, 132 Miss. 859, 96 So. 849 (1923).

3. Particular applications.

Where clay deposit locators and a brick manufacturer, entered into an agreement which provided that the locators would be paid a certain royalty over and above a royalty to be received by the lessors of land containing the clay deposit, provided that the manufacturer could not compete with the locators in leasing lands for the purpose of mining clay, and further provided that the manufacturer had a right to a lease if the locators were unable to lease lands which the manufacturer found necessary for its corporate purposes, with the locators still to receive such overriding royalty, the agreement was not a noncompetitive agreement in restraint of trade, but was instead an agreement providing for the payment of an overriding royalty on all clay used for the manufacturer's corporate purposes. Hood Indus., Inc. v. King, 255 So. 2d 912 (Miss. 1971).

An agreement whereby the stockholders of a merged newspaper corporation agreed not to compete with the corporation while owning stock therein and for a period of five years after ceasing to be stockholders was no unreasonable restraint of trade, was not inimical to the public welfare, and did not violate this section. Morgan v. Jacobs, 200 So. 2d 443 (Miss. 1967).

An agreement that all material shall be bought at a specified price from one furnishing money with which to carry on a business may be found to violate the statute. Ready-Mix Concrete & Concrete Prods. Co. v. Perry, 239 Miss. 329, 123 So. 2d 241 (1960).

Granting to defendants peremptory instruction is reversible error in action by Jackson bakery against three other bakeries operating in and outside of Jackson, for damages and penalties for violations of this section and § 75-21-3, predicated upon simultaneous cut in price of bread by defendants to price lower than their price for same bread outside city limits and to price below production cost, where evidence was sufficient to take case to jury. Wagley v. Colonial Baking Co., 208 Miss. 815, 45 So. 2d 717 (1950), error overruled, 46 So. 2d 925 (Miss. 1950).

Reduction of prices is absolute right of owner of business and is lawful of itself, but under guise of exercising an absolute right it is not lawful indirectly to interfere with business, employment, or occupation of third person, where exercise of right is with object of injuring third person rather than primarily of benefiting person exercising right. Wagley v. Colonial Baking Co., 208 Miss. 815, 45 So. 2d 717 (1950), error overruled, 46 So. 2d 925 (Miss. 1950).

A claim for damages under this statute passed to the claimant's bankrupt estate. Fazakerly v. E. Kahn's Sons Co., 75 F.2d 110 (5th Cir. 1935).

That trustees owned and operated intrastate railroad did not render trust agreement illegal, even if Constitution prohibited it. State ex rel. Knox v. Edward Hines Lumber Co., 150 Miss. 1, 115 So. 598 (1928).

Where defendant for a long time had enjoyed a monopoly of the ice business in a community, and when another person contracted with an ice manufacturer in another city to furnish ice for sale in the defendant's community, cut his retail price in half, represented to the ice manufacturer in the other city that the one to whom the manufacturer furnished ice in his city was in poor financial condition, threatened to drive him into bankruptcy, and proceeded to sell ice at cut rates in the city of such manufacturer, it was properly held that the defendant's acts constituted a violation of the anti-trust laws of the state. Harvey v. State, 149 Miss. 874, 116 So. 98 (1928).

Nonresident beneficiaries in turning over funds to trustee for investment and trustee purchasing land in state did not violate anti-trust statute. State ex rel. Knox v. Edward Hines Lumber Co., 150 Miss. 1, 115 So. 598 (1928).

Declaration of trusts giving trustees control of lands previously held by corporations as trustees and earnings therefrom for purpose of disposition of property for benefit of certificate holders held not to violate public policy or anti-trust statute, where not inimical to public welfare. State ex rel. Knox v. Edward Hines Lumber Co., 150 Miss. 1, 115 So. 598 (1928).

If trustees could not operate railroad, state's remedy was by quo warranto not anti-trust law proceedings. State ex rel. Knox v. Edward Hines Lumber Co., 150 Miss. 1, 115 So. 598 (1928).

Contract by seller of restaurant not to enter like business in competition with buyer in same municipality, without limiting time, held not contrary to anti-trust statute. Jackson v. Price, 140 Miss. 249, 105 So. 538 (1925).

Provision in contract that, if buyer sold cement purchased, or used any part of it in work other than that described, seller could decline to make further deliveries, held not to violate anti-trust statute. Gano v. Delmas, 140 Miss. 323, 105 So. 535 (1925).

Funds of nonresident corporation violating anti-trust law are subject to attachment in hands of resident agents. Nugent & Pullen v. Robertson, 126 Miss. 419, 88 So. 895 (1921).

4. —Prosecution under statute.

CIrcuit court properly granted the wood-processor a directed verdict on a Miss. Code Ann. § 75-21-1 (Rev. 2009) claim where the evidence established, at most, conscious parallelism with respect to seeking lower timber prices, not an implied or express agreement to do so. Ga. Pac. Corp. v. Cook Timber Co., — So. 3d —, 2016 Miss. LEXIS 99 (Miss. Mar. 3, 2016).

In antitrust action brought by cable television system operator against competing system operators and cable television programming providers concerning the defendant's entry into exclusive dealing arrangement with competing system operators, allegations of antitrust violations under Mississippi law would be dismissed, where complaint charging violation of federal antitrust statutes was dismissed for failure to state claim; where jurisdiction over state law claims is based solely on pendent jurisdiction, if federal claims are dismissed before trial state claims should be dismissed as well. Futurevision Cable Sys. v. Multivision Cable TV Corp., 789 F. Supp. 760 (S.D. Miss. 1992), aff'd without op., 986 F.2d 1418 (5th Cir. 1993).

In state's suit on attorney-general's relation to enforce anti-trust laws, injunction may be granted only on final hearing. Harvey v. State, 149 Miss. 874, 116 So. 98 (1928).

In penal suit for violation of anti-trust law, unlawful agreement must be averred. Miller v. Fidelity Union Fire Ins. Co., 126 Miss. 301, 88 So. 711 (1921).

Denial of agreement to fix rates held sufficient in prosecution for violating anti-trust law. Miller v. Fidelity Union Fire Ins. Co., 126 Miss. 301, 88 So. 711 (1921).

Unlawful agreement must be averred in prosecution of insurance companies for violating anti-trust law. Miller v. Fidelity Union Fire Ins. Co., 126 Miss. 301, 88 So. 711 (1921).

RESEARCH REFERENCES

ALR. Statutes prohibiting restraint on profession, trade, or business as applicable to restrictions in employment or agency contracts. 3 A.L.R.2d 522.

Sufficiency of consideration for employee's covenant not to compete, entered into after inception of employment. 51 A.L.R.2d 825.

Application to banking institutions of antimonopoly or antitrust laws. 83 A.L.R.2d 374.

Validity and construction of restrictive covenant not to compete ancillary to franchise agreement. 50 A.L.R.3d 746.

Enforceability, insofar as restrictions would be reasonable, of contract containing unreasonable restrictions on competition. 61 A.L.R.3d 397.

Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to sale of practice. 62 A.L.R.3d 918.

Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to partnership agreement. 62 A.L.R.3d 970.

Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to employment agreement. 62 A.L.R.3d 1014.

Validity and construction of contract between hospital and physician providing for exclusive medical services. 74 A.L.R.3d 1268.

Application of state antitrust laws to athletic leagues or associations. 85 A.L.R.3d 970.

Validity and construction of contractual restriction on right of accountant to practice, incident to sale of practice or withdrawal from accountancy partnership. 13 A.L.R.4th 661.

Constitutional right to jury trial in cause of action under state unfair or deceptive trade practices law. 54 A.L.R.5th 631.

What constitutes separate and distinct products or services for purposes of determining whether tying arrangement violates § 1 of Sherman Act (15 USCS § 1) or § 3 of Clayton Act (15 USCS § 14). 46 A.L.R. Fed. 516.

What constitutes "boycott, coercion, or intimidation" for purposes of § 3(b) of McCarran-Ferguson Act (15 USCS § 1013(b)). 52 A.L.R. Fed. 255.

Price cutting by manufacturer in response to lower prices of competitors as violation of § 2 of Sherman Act (15 USCS § 2). 52 A.L.R. Fed. 728.

Determining relevant market in suit where franchisee charges franchisor with monopolization of, or attempt to monopolize, market in violation of § 2 of Sherman Act (15 USCS § 2). 56 A.L.R. Fed. 406.

Antitrust immunity under Federal Communications Act of 1934 (47 USCS § 151 et seq.) of communications carrier for acts involving interconnections with other communications carriers and equipment. 59 A.L.R. Fed. 239.

Reciprocal dealing as violation of Sherman Antitrust Act (15 USCS §§ 1 et seq.)

and Clayton Antitrust Act (15 USCS §§ 12 et seq). 69 A.L.R. Fed. 330.

Am Jur. 54 Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 1, 2 et seq.

4A Am. Jur. Legal Forms 2d, Business Franchises, §§ 50:57, 50:58, 50:84, 50:86, 50:179 to 187, 50:317, 50:319, 50:373, 50:374, 50:375, 50:377 to 380.

12B Am. Jur. Legal Forms 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 178:20 et seq., 178:39, 178:40, 178:51 et seq., 178:93.

Lawyers' Edition. Hospital's exclusive contract with firm of anesthesiologists held not to violate Sherman Act. 80 L. Ed. 2d 2.

Law Reviews. Walker, Common Law protection of economic expectancies: "Business Torts" in Mississippi. 50 Miss. L. J. 335, March 1979.

Practice References. Julian O. von Kalinowski, Antitrust Counseling and Litigation Techniques (Matthew Bender).

Julian O. von Kalinowski, Antitrust Laws and Trade Regulation (Second Edition) (Matthew Bender).

§ 75-21-3. Additional contracts or combinations not allowed by law.

Any corporation, domestic or foreign, or individual, partnership, or association of persons whatsoever, who, with intent to accomplish the results herein prohibited or without such intent, shall accomplish such results to a degree inimical to public welfare, and shall thus:

(a) Restrain or attempt to restrain the freedom of trade or production;

(b) Or shall monopolize or attempt to monopolize the production, control or sale of any commodity, or the prosecution, management or control of any kind, class or description of business;

(c) Or shall engross forestall or attempt to engross or forestall any commodity;

(d) Or shall destroy or attempt to destroy competition in the manufacture or sale of a commodity, by selling or offering the same for sale at a lower price at one place in the state than another or buying or offering to buy a commodity at a higher price at one place in the state than another, differences of freight and other necessary expenses of sale and delivery considered;

(e) Or shall destroy or attempt to destroy competition by rendering any service or manipulating, handling or storing any commodity for a less price in one locality than in another, the differences in the necessary expenses of carrying on the business considered, shall be deemed and held a trust and combine within the meaning and purpose of this section, and shall be liable to the pains, penalties, fines, forfeitures, judgments, and recoveries denounced against trusts and combines and shall be proceeded against in manner and form herein provided, as in case of other trusts and combines.

It shall be sufficient to make out a prima facie case of a violation of subdivision (e) of this section to show lower charge for the service therein mentioned in one locality than another, or to show a higher price paid for a commodity in one locality than another, differences of freight and other necessary expenses of operating business considered.

SOURCES: Codes, 1892, § 4437; 1906, § 5002; Hemingway's 1917, § 3283; 1930, § 3437; 1942, § 1089; Laws, 1908, ch. 119; Laws, 1926, ch. 182.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the introductory paragraph. The word "inimicable" was changed to "inimical." The Joint Committee ratified the correction at its May 20, 1998, meeting.

Cross References — Unlawful trust or combination in the sale of liquefied compressed gas and appliances, see § 75-57-63.

JUDICIAL DECISIONS

1. Constitutionality.
2. Construction and application, generally.
3. Particular applications-illegal contract or combination.
4. —Contract or combination not prohibited.
5. Prosecution under statute.

1. Constitutionality.

Act, harmless when done by one, may become public wrong when done by many acting in concert and when it becomes object of conspiracy and operates in restraint of trade police power of state may prohibit it without impairing liberty of contract. Wagley v. Colonial Baking Co., 208 Miss. 815, 45 So. 2d 717 (1950), error overruled, 46 So. 2d 925 (Miss. 1950).

The general anti-trust law is constitutional. State v. Jackson Cotton Oil Co., 95 Miss. 6, 48 So. 300 (1909); Standard Oil Co. v. State, 104 Miss. 886, 61 So. 981 (1913); Delmas v. Pascagoula S. Ry. & P. Co., 103 Miss. 235, 60 So. 210 (1912).

Legislative power to regulate trusts is general within constitutional limitations, and not dependent upon Const. 1890 § 198. State v. Jackson Cotton Oil Co., 95 Miss. 6, 48 So. 300 (1909).

The anti-trust law is severable and any invalid provision may be eliminated. State v. Jackson Cotton Oil Co., 95 Miss. 6, 48 So. 300 (1909).

2. Construction and application, generally.

The Attorney General's claims against manufacturers of infant formula for alleged violations of state antitrust statutes (§§ 75-21-1, 75-21-3 and 75-21-7) were not preempted by federal antitrust law. Moore ex rel. Miss. v. Abbott Lab., Inc., 900 F. Supp. 26 (S.D. Miss. 1995).

Regarding the two-pronged test for determining the applicability of the state action exemption from federal antitrust laws — that the challenged restraint must be one clearly articulated and affirmatively expressed as state policy and the state must supervise actively any private anticompetitive conduct — a state policy that expressly permits but does not compel anticompetitive conduct may be clearly articulated within the meaning of the first prong of the test. Southern Motor Carriers Rate Conference, Inc. v. United States, 471 U.S. 48, 105 S. Ct. 1721, 85 L. Ed. 2d 36 (1985), on remand, 764 F.2d 748 (11th Cir. Ga. 1985).

Freedom of trade competition and economic necessity may justify different sales prices in different localities. Wagley v. Colonial Baking Co., 46 So. 2d 925 (Miss. 1950).

This statute should be construed in the light of the announcement in Fairmont Creamery Co. v. Minnesota (1927) 274 U.S. 1, 71 L. Ed. 893, 47 S. Ct. 506, 52 A.L.R. 163, wherein the court, among other things, said: "Buyers in competitive markets must accommodate their bids to prices offered by others, and the payment of different prices at different places is the ordinary consequent; enforcement of the statute would amount to fixing the price at which plaintiff in error may buy, since one purchase would establish this for all points without regard to ordinary trade conditions." Wagley v. Colonial Baking Co., 46 So. 2d 925 (Miss. 1950).

The legislature has declared the forbidden things, listed in statute, to be inimical to public welfare, and if proof be sufficiently made of transgression of statutory prohibitions, such act is intrinsically inimical to public welfare without further or special proof of result beyond definitions of statute, or deduction by courts that proven violations are or are not inimical to public welfare. Wagley v. Colonial Baking Co., 208 Miss. 815, 45 So. 2d 717 (1950), error overruled, 46 So. 2d 925 (Miss. 1950).

Reduction of prices is absolute right of owner of business and is lawful of itself, but under guise of exercising an absolute right, it is not lawful indirectly to interfere with business, employment, or occupation of third person, where exercise of right was with object of injuring third person rather than primarily of benefiting person exercising right. Wagley v. Colonial Baking Co., 208 Miss. 815, 45 So. 2d 717 (1950), error overruled, 46 So. 2d 925 (Miss. 1950).

Illegality of contract to purchase patterns did not defeat recovery of price received by buyer. McCall Co. v. Parsons-May-Oberschmidt Co., 107 Miss. 865, 66 So. 274 (1914).

Anti-trust statute includes only contracts in restraint of trade which at common law were held invalid as against public policy. Sivley v. Cramer, 105 Miss. 13, 61 So. 653 (1913).

A statute creating a railroad commission for the supervision of common carriers, including telegraph and telephone companies, giving it power to fix rates, prohibiting discrimination in rates unless authorized by the commission, and providing remedies for violation of the act, conferred jurisdiction upon the railroad commission as to the whole matter of regulating telephone rates and made ample provision as to remedies in the event of violation of the law, to the exclusion of the general anti-trust laws. Cumberland Tel. & Tel. Co. v. State, 99 Miss. 1, 54 So. 446 (1911).

Where object is unlawful it is immaterial if means adopted be peaceable and otherwise lawful. Retail Lumber Dealers' Ass'n v. State, 95 Miss. 337, 48 So. 1021 (1909), aff'd, 217 U.S. 433, 30 S. Ct. 535, 54 L. Ed. 826 (1910).

That an insurer is a member of an unlawful combination does not prevent its enforcing a right of subrogation to the claim against one wrongfully destroying the property, since the subrogation agreement does not relate to the business of the combine. Freed v. American Fire Ins. Co., 90 Miss. 72, 43 So. 947, 122 Am. St. R. 307 (1907).

Where a contract or understanding is not of itself inimical to the public welfare or in contravention of express statute it will be upheld unless it is so operated as to become oppressive by infringing upon the rights of private individuals, or unless it works to the detriment of the general public. Yazoo & Miss. V. Ry. v. Searles, 85 Miss. 520, 37 So. 939 (1905).

The test of a trust and the essential of its existence is that the contract or combination be on account of its actual results obnoxious to public policy or be in itself and in its necessary effect inimical to the public welfare. Yazoo & Miss. V. Ry. v. Searles, 85 Miss. 520, 37 So. 939 (1905).

In determining whether a contract violates public policy as evidenced by the anti-trust statutes the courts will consider the nature of the business contemplated and the tendency of the contract as effecting the public rather than the nature of the parties, whether corporations or individuals. Yazoo & Miss. V. Ry. v. Searles, 85 Miss. 520, 37 So. 939 (1905).

Courts will look through the form of an association in order to ascertain its character and will judge of its nature not merely by its promulgated rules but by its actual operation, and will decide the question of its legality of illegality according to the true nature and probable effect of the arrangement without special regard to the form which has been assumed in the particular instance. Yazoo & Miss. V. Ry. v. Searles, 85 Miss. 520, 37 So. 939 (1905).

Canned oysters sold as merchandise are a commodity within the meaning of section. Barataria Canning Co. v. Joulian, 80 Miss. 555, 31 So. 961 (1902).

The words "and is inimical to public welfare, unlawful and a criminal conspiracy," with which this section concludes, are not an added element of definition, but a mere declaration of the effect of the trust. Barataria Canning Co. v. Joulian, 80 Miss. 555, 31 So. 961 (1902) (action under former section).

The anti-trust law is not intended to prevent a person from conducting his private business according to his own judgment, and he may confine the sale of goos manufactured by him to a single dealer in a given territory. Houck v. Wright, 77 Miss. 476, 27 So. 616 (1900).

3. Particular applications-illegal contract or combination.

A county bar association's fee scheme recommending minimum fees to be charged by lawyers for real property title examination, and the enforcement of such schedule by the state bar, membership in which is necessary in order to practice in the state, constitute price fixing for purposes of the antitrust proscriptions of § 1 of the Sherman Act (15 USCS § 1), where the record establishes that (1) the fee schedule was not purely advisory for the mere dissemination of price information as to past standards, but instead constituted a fixed, rigid price floor for minimum fees to be charged in future transactions; (2) the fee schedule was enforced through (a) the prospect of professional discipline from the state bar, which had issued ethical opinions that any lawyer, whether or not a member of a county bar, might be disciplined for habitually charging less than the local bar's suggested minimum fees, and (b) the desire of attorneys to comply with announced professional norms, which motivation was reinforced by the insurance that other lawyers would not compete by underbidding; (3) nearly all of the county bar members charged fees equal to or in excess of the minimum fees set by the schedule for title examination; and (4) consumers could not turn to alternative sources for the necessary service, since title examination was indispensable in the process of financing a real estate purchase and could be performed only by an attorney licensed to practice in the state. Goldfarb v. Virginia State Bar, 421 U.S. 773, 95 S. Ct. 2004, 44 L. Ed. 2d 572 (1975), reh'g denied, 423 U.S. 886, 96 S. Ct. 162, 46 L. Ed. 2d 118 (1975).

An agreement that all material shall be bought at a specified price from one furnishing money with which to carry on a business may be found to violate the statute. Ready-Mix Concrete & Concrete Prods. Co. v. Perry, 239 Miss. 329, 123 So. 2d 241 (1960).

Granting to defendants peremptory instruction is reversible error in action by Jackson bakery against three other bakeries operating in and outside of Jackson, for damages and penalties for violations of § 75-21-1, predicated upon simultaneous cut in price of bread by defendants to price lower than their price for same bread outside city limits and to price below production cost, where evidence was sufficient to take case to jury. Wagley v. Colonial Baking Co., 46 So. 2d 925 (Miss. 1950).

Conspiracy of oil companies to monopolize trade throughout United States is punishable under Mississippi law. Standard Oil Co. v. State, 107 Miss. 377, 65 So. 468 (1914).

Plaintiff may recover reasonable value of goods although contract of sale was violative of anti-trust law. McCall Co. v. Hughes, 102 Miss. 375, 59 So. 794 (1912).

Agreement of retail lumber dealers not to purchase from wholesale dealer competing with retailers violated Code 1906, § 5002 (corresponding section, prior to amendment of 1908). Retail Lumber Dealers' Ass'n v. State, 95 Miss. 337, 48 So. 1021 (1909), aff'd, 217 U.S. 433, 30 S. Ct. 535, 54 L. Ed. 826 (1910).

Consolidation of corporation through holding concern to stifle competition is illegal. Southern Elec. Sec. Co. v. State, 91 Miss. 195, 44 So. 785, 124 Am. St. R. 638 (1907).

Contract not to buy cottonseed in consideration of quantity of cottonseed to be delivered by competitor violates anti-trust law. Kosciusko Oil Mill & Fertilizer Co. v. Wilson Cotton Oil Co., 90 Miss. 551, 43 So. 435 (1907).

A contract by which the defendant agreed to sell to the plaintiff, a competing manufacturer, all the cove oysters which he packed during certain months, except three carloads per month, and stipulated that such three carloads should not be sold to the trade at a lower price than offered to the trade by the plaintiff, is void as an agreement to limit the price of a commodity, within this section. Barataria Canning Co. v. Joulian, 80 Miss. 555, 31 So. 961 (1902).

4. —Contract or combination not prohibited.

Jury verdict in favor of a logging company based upon Miss. Code Ann.§ 75-21-3 (Rev. 2009) was reversed as there was no evidence that a wood-processor monopolized or attempted to monopolize its industry or sought to destroy competition, and its attempt to purchase timber at the lowest possible price from suppliers who delivered at a consistent price and its intent to stockpile timber in anticipation of higher future timber prices was not illegal. Ga. Pac. Corp. v. Cook Timber Co., — So. 3d —, 2016 Miss. LEXIS 99 (Miss. Mar. 3, 2016).

Attempting to destroy competition in cotton ginning by putting down price was not violative of subsection m or n of Code 1917, § 3283. Crescent Cotton Oil Co. v. State, 121 Miss. 615, 83 So. 680 (1920), aff'd, 257 U.S. 129, 42 S. Ct. 42, 66 L. Ed. 166 (1921).

A contract whereby railroad company gave another exclusive right to load logs between stations was not invalid. Yazoo & Miss. V. Ry. v. Crawford, 107 Miss. 355, 65 So. 462 (1914).

A car service association which is merely the agent of different railroads in the enforcement of car service and demurrage charges is not an illegal trust or combine. Yazoo & Miss. V. Ry. v. Searles, 85 Miss. 520, 37 So. 939 (1905).

Although the bid on which the contract was based might be below the normal cost of production, the anti-trust law of 1900 (predecessor of the present law), had no application to the state or its public agencies in letting a contract for copyrighted school books in the manner provided by law, and as the result of competitive bidding, by the terms of which new books were for a time to be exchanged without cost, book for book, for those then in use, after which the prices then agreed on were to be paid for all books furnished during the continuance of the contract. B.F. Johnson Pub. Co. v. Mills, 79 Miss. 543, 31 So. 101 (1902).

5. Prosecution under statute.

In antitrust action brought by cable television system operator against competing system operators and cable television programming providers concerning the defendant's entry into exclusive dealing arrangement with competing system operators, allegations of antitrust violations under Mississippi law would be dismissed, where complaint charging violation of federal antitrust statutes was dismissed for failure to state claim; where jurisdiction over state law claims is based solely on pendent jurisdiction, if federal claims are dismissed before trial state claims should be dismissed as well. Futurevision Cable Sys. v. Multivision Cable TV Corp., 789 F. Supp. 760 (S.D. Miss. 1992), aff'd without op., 986 F.2d 1418 (5th Cir. 1993).

In action against several oil companies, it was immaterial that bill prayed for separate and not joint penalties. Standard Oil Co. v. State, 107 Miss. 377, 65 So. 468 (1914).

Bill to recover penalty under anti-trust law demurrable for not alleging sales made for purpose of destroying competition. McCall Co. v. Hughes, 102 Miss. 375, 59 So. 794 (1912).

Courts must be left to determine what constitutes monopoly as each case arises. Cumberland Tel. & Tel. Co. v. State, 100 Miss. 102, 54 So. 670 (1911).

Code 1906, § 5002, as amended by Laws 1908, ch. 119 (former section relating to "additional contracts or combinations not allowed by law"), merely broadened penalties and extended right to attack combinations invalid as against public policy prior to the act. Cumberland Tel. & Tel. Co. v. State, 100 Miss. 102, 54 So. 670 (1911).

Foreign corporation prosecuted under anti-trust laws must answer interrogatories and file with answers exhibits requested. Cumberland Tel. & Tel. Co. v. State, 98 Miss. 159, 53 So. 489 (1910).

Information alleging single cause of action, though containing unnecessary averments, was sufficient. State v. Jackson Cotton Oil Co., 95 Miss. 6, 48 So. 300 (1909).

RESEARCH REFERENCES

ALR. Sufficiency of consideration for employee's covenant not to compete, entered into after inception of employment. 51 A.L.R.2d 825.

Validity and construction of restrictive covenant not to compete ancillary to franchise agreement. 50 A.L.R.3d 746.

Validity and construction of contract between hospital and physician providing for exclusive medical services. 74 A.L.R.3d 1268.

Constitutional right to jury trial in cause of action under state unfair or deceptive trade practices law. 54 A.L.R.5th 631.

Am Jur. 54 Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 1, 2 et seq.

Practice References. Julian O. von Kalinowski, Antitrust Counseling and Litigation Techniques (Matthew Bender).

Julian O. von Kalinowski, Antitrust Laws and Trade Regulation (Second Edition) (Matthew Bender).

§ 75-21-5. Agricultural and other organizations not forbidden.

Nothing contained in this chapter shall be construed to forbid the existence of agricultural, horticultural, poultry, cattle or dairy organizations, instituted for the purpose of cooperation or mutual help, having no capital stock and not conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof, nor be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust law; nor shall this chapter prevent or penalize agreements entered into between canners or catchers of seafood products or between canners and catchers of such products for the advancement and welfare of the seafood industry in Mississippi, when such agreements so made between canners or catchers of such products, or canners and catchers of such products, shall be approved by an order entered upon the minutes of the Mississippi Seafood Commission.

SOURCES: Codes, 1930, § 3438; 1942, § 1090; Laws, 1926, ch. 182; Laws, 1934, ch. 379.

Cross References — Cooperative marketing associations as not in restraint of trade, see § 79-19-51.

§ 75-21-7. Penalty for violation of anti-trust laws.

Any person, corporation, partnership, firm or association of persons and the officers and representatives of the corporation or association violating any of the provisions of this chapter shall forfeit not less than one hundred dollars ($100.00) nor more than two thousand dollars ($2,000.00) for every such violation. Each month in which such person, corporation or association shall violate this chapter shall be a separate violation, the forfeiture and penalty in such case to be recovered alone by suit in the name of the state on the relation of the attorney general and by the consent of the attorney general suits may be brought by any district attorney, such suits to be brought in any court of competent jurisdiction.

SOURCES: Codes, 1892, § 4439; 1906, § 5004; Hemingway's 1917, § 3286; 1930, § 3439; 1942, § 1091; Laws, 1926, ch. 182.

Cross References — Criminal and civil liability for conspiracy in unlawful restraint of trade, see § 97-23-85.

JUDICIAL DECISIONS

1. In general.
2. Particular actions.

1. In general.

The Attorney General's claims against manufacturers of infant formula for alleged violations of state antitrust statutes (§§ 75-21-1, 75-21-3 and 75-21-7) were not preempted by federal antitrust law. Moore ex rel. Miss. v. Abbott Lab., Inc., 900 F. Supp. 26 (S.D. Miss. 1995).

Obligation to state was not postponed or released by taking away power of revenue agent to maintain suit under anti-trust laws. Miller v. Globe-Rutgers Fire Ins. Co., 143 Miss. 489, 108 So. 180 (1926).

The fact that this section imposed a penalty for each violation did not authorize the recovery of more than one penalty with actual damages. Delmas v. Pascagoula S. Ry. & P. Co., 103 Miss. 235, 60 So. 210 (1912).

This section does not preclude suit by revenue agent to collect penalty. Dukate v. Adams, 101 Miss. 433, 58 So. 475 (1911).

Statute giving railroad commission jurisdiction over regulation of telephone rates provided ample remedy for violations of law exclusive of anti-trust laws. Cumberland Tel. & Tel. Co. v. State, 99 Miss. 1, 54 So. 446 (1911).

Each member of combination is liable for full amount of penalty. Grenada Lumber Co. v. State, 98 Miss. 536, 54 So. 8 (1911).

Penalty of this section was not applicable to act occurring in 1903. State v. Jackson Cotton Oil Co., 95 Miss. 6, 48 So. 300 (1909).

2. Particular actions.

Error in judgment or decree imposing penalties for membership in trusts and combines for day or days may be separately assigned on appeal. Aetna Ins. Co. v. Robertson, 131 Miss. 343, 94 So. 7 (1922), modified on suggestion of error, 131 Miss. 345, 95 So. 137 (1923), error dismissed, 263 U.S. 673, 44 S. Ct. 5, 68 L. Ed. 500 (1923), cert. denied, 263 U.S. 698, 44 S. Ct. 5, 68 L. Ed. 512 (1923), reh'g denied, 263 U.S. 678, 44 S. Ct. 132, 68 L. Ed. 502 (1923).

Action to recover penalty is civil and not criminal. Grenada Lumber Co. v. State, 98 Miss. 536, 54 So. 8 (1911); Dukate v. Adams, 101 Miss. 433, 58 So. 475 (1911).

Bill to collect penalty was not multifarious for alleging combine entered into was unlawful. Dukate v. Adams, 101 Miss. 433, 58 So. 475 (1911).

A quo warranto proceeding instituted by the state on the relation of the attorney-general to forfeit the charter of a corporation because it was a party to a trust and combine, was a civil and not a criminal proceeding, and the venue was governed by Code 1892, § 3521 [Code 1942, § 1121]. State ex rel. Att'y Gen. v. Mississippi Cotton Oil Co., 79 Miss. 203, 30 So. 609 (1901).

RESEARCH REFERENCES

ALR. Constitutional right to jury trial in cause of action under state unfair or deceptive trade practices law. 54 A.L.R.5th 631.

Doctrine of potential competition as basis for finding violation of § 7 of Clayton Act (15 USCS § 18). 44 A.L.R. Fed. 412.

Am Jur. 54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 1012 et seq.

CJS. 58 C.J.S., Monopolies §§ 257 et seq.

Law Reviews. Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

Practice References. Julian O. von Kalinowski, Antitrust Counseling and Litigation Techniques (Matthew Bender).

Julian O. von Kalinowski, Antitrust Laws and Trade Regulation (Matthew Bender).

§ 75-21-9. Private persons and corporations may sue.

Any person, natural or artificial, injured or damaged by a trust and combine as herein defined, or by its effects direct or indirect, may recover all damages of every kind sustained by him or it and in addition a penalty of five hundred dollars ($500.00), by suit in any court of competent jurisdiction. Said suit may be brought against one or more of the parties to the trust or combine and one or more of the officers and representatives of any corporation a party to the same, or one or more of either. Such penalty may be recovered in each instance of injury. All recoveries herein provided for may be sued for in one suit.

SOURCES: Codes, 1892, § 4440; 1906, § 5007; Hemingway's 1917, § 3289; 1930, § 3440; 1942, § 1092; Laws, 1926, ch. 182.

Cross References — Trust and combine defined, see § 75-21-1.

JUDICIAL DECISIONS

1. In general.

Summary judgment was properly granted to tobacco companies on an asbestos company's claim for recovery of settlements paid to asbestos claimants who were also smokers under the antitrust law, Miss. Code Ann. § 75-21-9, because the asbestos company failed to allege an injury of the type the antitrust law was intended to redress. Owens Corning v. R.J. Reynolds Tobacco Co., 868 So. 2d 331 (Miss. 2004).

The restraint of trade statute has no application to boycotts to achieve political goals; therefore, in a proceeding for an injunction and for damages arising out of an economic boycott by a civil rights organization and other defendants to achieve political ends, the chancellor erred in allowing a penalty of $500 to each of the 12 complainants pursuant to § 75-21-9. NAACP v. Claiborne Hdwe. Co., 393 So. 2d 1290 (Miss. 1980), amended, 405 So. 2d 115 (Miss. 1981), rev'd on other grounds, 458 U.S. 886, 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982), reh'g denied, 459 U.S. 898, 103 S. Ct. 199, 74 L. Ed. 2d 160 (1982).

Recovery under this section may not include profits which are wholly conjectural. Ready-Mix Concrete & Concrete Prods. Co. v. Perry, 239 Miss. 329, 123 So. 2d 241 (1960).

Granting to defendants peremptory instruction is reversible error in action by Jackson bakery against three other bakeries operating in and outside of Jackson, for damages and penalties for violations of Code 1942, §§ 1088 and 1089, predicated upon simultaneous cut in price of bread by defendants to price lower than their price for same bread outside city limits and to price below production cost, where evidence was sufficient to take case to jury. Wagley v. Colonial Baking Co., 208 Miss. 815, 45 So. 2d 717 (1950), error overruled, 46 So. 2d 925 (Miss. 1950).

Where ice dealer, after continuing to buy ice from power company under assurance that expired contract would be renewed, was notified of termination of contract, power company, which had been losing money on ice plant, and competitor, to whom company sold machinery and good will, held not liable to dealer under trust and combines statutes, since company had right to shut plant down and incidental right to sell to competitor and competitor had corresponding right to buy. Pitts v. Mississippi Power & Light Co., 177 Miss. 288, 170 So. 817 (1936).

Section 5007, Code of 1906 (§ 1092, Code of 1942), authorized only one penalty with actual damages, although § 5004, Code of 1906 (§ 1091, Code of 1942), imposed a penalty for every offense. Delmas v. Pascagoula S. Ry. & P. Co., 103 Miss. 235, 60 So. 210 (1912).

By this section the legislature did not intend that anti-trust laws should apply to discrimination in rates by telephone company. Cumberland Tel. & Tel. Co. v. State, 99 Miss. 1, 54 So. 446 (1911).

The mere proof that one has been compelled to pay more for a service than his competitors were paying for the same service, does not constitute the required proof of damage. Yazoo & Miss. V. Ry. v. Searles, 85 Miss. 520, 37 So. 939 (1905).

RESEARCH REFERENCES

ALR. Right to contribution in federal antitrust case. 47 A.L.R. Fed. 712.

Limitation of antitrust damages under 15 USCS § 15 to amount of injunction bond where there has been per se violation of § 1 of Sherman Act (15 USCS § 1). 50 A.L.R. Fed. 575.

Right of retail buyer of price-fixed product to sue manufacturer on federal antitrust claim. 55 A.L.R. Fed. 919.

Am Jur. 54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 1013 et seq.

CJS. 58 C.J.S., Monopolies § 202 et seq.

§ 75-21-11. Contracts void.

Every contract or agreement to enter into or pursue any trust and combine, and every contract or agreement made by another with any trust and combine, or with any member of a trust and combine for any purpose relative to the business of such trust and combine, is void, and cannot be enforced in any court.

SOURCES: Codes, 1892, § 4438; 1906, § 5003; Hemingway's 1917, § 3285; 1930, § 3441; 1942, § 1093.

JUDICIAL DECISIONS

1. In general.

Contract does not violate public policy, unless prohibited by statute or condemned by decision of court. State ex rel. Knox v. Edward Hines Lumber Co., 150 Miss. 1, 115 So. 598 (1928).

Contract in restraint of trade is not invalid, unless inimical to public welfare. State ex rel. Knox v. Edward Hines Lumber Co., 150 Miss. 1, 115 So. 598 (1928).

Contract made by insurance companies with agents, not part of an agreement to fix rates, were valid. Aetna Ins. Co. v. Robertson, 131 Miss. 343, 94 So. 7 (1922), modified on suggestion of error, 131 Miss. 345, 95 So. 137 (1923), error dismissed, 263 U.S. 673, 44 S. Ct. 5, 68 L. Ed. 500 (1923), cert. denied, 263 U.S. 698, 44 S. Ct. 5, 68 L. Ed. 512 (1923), reh'g denied, 263 U.S. 678, 44 S. Ct. 132, 68 L. Ed. 502

(1923).

A contract not to buy cottonseed in consideration of delivery of quantity of cottonseed by competitor was void under antitrust laws. Kosciusko Oil Mill & Fertilizer Co. v. Wilson Cotton Oil Co., 90 Miss. 551, 43 So. 435 (1907).

The test of a trust and the essential to its existence is that the contract or combination be on account of its natural result obnoxious to public policy or be in itself and in its necessary effect inimical to the public welfare. A car service association which is merely the agent of different railroads in the enforcement of car service and demurrage charges, is not a trust. Yazoo & Miss. V. Ry. v. Searles, 85 Miss. 520, 37 So. 939 (1905).

RESEARCH REFERENCES

ALR. Enforceability, insofar as restrictions would be reasonable, of contract containing unreasonable restrictions on competition. 61 A.L.R.3d 397.

Am Jur. 54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 1029 et seq.

§ 75-21-13. Corporations not to purchase competing one.

No corporation shall acquire directly or indirectly, the whole or any part of the capital stock of any competing corporation doing business in this state, nor directly or indirectly acquire the franchise, plant or equipment of any other competing corporation doing business in this state if such other corporation be engaged in the same kind of business and be a competitor therein, where the effect of such acquisition of stock, franchise, plant or equipment may be to substantially lessen competition or to restrain trade or competition in the state, or any community thereof, or tend to create a monopoly of any line of commerce and will be inimical to public welfare. This section shall not apply to corporations purchasing such stock in payment of an indebtedness, and not using the same by voting, or otherwise, to bring about or attempting to bring about, the substantial lessening of competition. Provided, however, that fire and marine insurance corporations may own stock in other insurance companies and may be licensed to do business in this state, or authorized to continue business in this state, but the state insurance commissioner may refuse permission to any company to be licensed in the first instance or he may subsequently revoke the license of any company if it appears after notice and hearing that to permit one insurance corporation owning stock in a competing corporation to continue to do business in this state would be injurious to, or contrary to the public interest.

SOURCES: Codes, 1906, § 5005; Hemingway's 1917, § 3287; Hemingway's 1921 Supp. § 3287a; 1930, § 3442; 1942, § 1094; Laws, 1920, ch. 313; Laws, 1926, ch. 182.

Cross References — Regulation of cotton gins, see § 75-41-11.
Prohibition against consolidation of competing railroads, see § 77-9-121.

JUDICIAL DECISIONS

1. In general.

The statute prohibiting corporations from acquiring capital stock of competing corporations engaged in same kind of business was inapplicable to purchase of hopelessly insolvent building and loan association's stock by corporation not engaged in business in same community as association, though it proposed to open office therein to make industrial loans, in absence of showing that such loans would create material competition with business of building and loan association or tend to create monopoly therein. Industrial Fin. & Thrift Corp. v. Smith, 179 Miss. 323, 175 So. 206 (1937).

Under provision barring corporations from purchasing or owning capital stock, or any part thereof, of any other competing corporation, acquisition of stock by one of two competing corporations of the other was a mere ultra vires act, of which only the state could complain. People's Bank v. Lamar County Bank, 107 Miss. 852, 67 So. 961 (1915).

In action for purchase-price of corporate stock, it is no defense that stock was really purchased for another corporation. Kelly v. Bank of Commerce, 101 Miss. 692, 57 So. 978 (1912).

This section does not apply to contract providing connections between corporation maintaining long distance telephone line and individual operating local system. Cumberland Tel. & Tel. Co. v. State, 100 Miss. 102, 54 So. 670 (1911).

Corporation purchasing interest in another corporation from individual cannot avoid payment of price on ground transaction was ultra vires. Watts Mercantile Co. v. Buchanan, 92 Miss. 540, 46 So. 66 (1908).

RESEARCH REFERENCES

ALR. Meaning of "substantial competition" for purposes of § 7 of the Clayton Act, as amended (15 USCS § 18), prohibiting stock acquisitions which may substantially lessen competition, but exempting common carriers where there is no substantial competition between acquiring and acquired company. 55 A.L.R. Fed. 322.

Am Jur. 54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 1004.

14 Am. Jur. Pl & Pr Forms (Rev), Insurance Form 11.1 (petition or application by insurance company against state commissioner of insurance to enjoin further proceedings to suspend or revoke insurance company's certificate of authority).

§ 75-21-15. To defraud in public contracts.

If any person, association, firm or corporation shall combine with any other person, association, firm or corporation, or if either of them combine with one or more of the others to prevent, by pooling, any or either of said persons, associations, firms or corporations from separately or individually bidding for the performance of a public work for the state, or any county, municipality, or levee board thereof; or if any person, association, firm or corporation shall prevent, by persuasion or reward, any other person, association, firm or corporation, or any one or more of them, from bidding for the performance of such public work, they, and each of them, shall be guilty of a misdemeanor, and shall be fined not less than Twenty-five Dollars ($25.00) nor more than One Thousand Dollars ($1,000.00).

SOURCES: Codes, 1892, § 4441; 1906, § 5008; Hemingway's 1917, § 3290; 1930 § 3443; 1942, § 1095.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed "fined not less than twenty-five nor more than one thousand " to "fined not less than Twenty-five Dollars ($25.00) nor more than One Thousand Dollars ($1,000.00)." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Letting of contracts for printing, fuel, furnishings, etc., for state offices and departments, see Miss. Const Art. 4, § 107.

Power of municipality to contract, see § 21-17-1.

Money to be paid on any contract on behalf of the state, county, municipality or levee board when the provisions of this section have been violated are not collectible, see § 75-21-17.

Conspiracy to defraud the state, see § 97-7-11.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Admissibility of posed photograph based on recollection of position of persons or movable objects. 19 A.L.R.2d 877.

Differences in character or quality of materials, articles, or work as affecting acceptance of bid for public contract. 27 A.L.R.2d 917.

Am Jur. 54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 833 et seq.

64 Am. Jur. 2d, Public Works and Contracts §§ 23, 24.

§ 75-21-17. Moneys not collectible.

All sums of money to be paid on any contract on behalf of the state, or any county, municipality or levee board thereof, when the provision of Section 75-21-15 had been violated, shall not be collectible, nor shall the same be paid by any officer or board having the payment thereof.

SOURCES: Codes, 1892, § 4442; 1906, § 5009; Hemingway's 1917, § 3291; 1930, § 3444; 1942, § 1096.

Cross References — Payment of county public works contracts, see § 19-13-15.

General powers of municipalities, see § 21-17-1 et seq.

§ 75-21-19. Proceedings for forfeiture of charter and right to do business.

Proceedings of any and every kind for forfeiture of charter, for forfeiture of right to do business in this state, for recovery of damages and all civil proceedings of any character whatever authorized by law for the execution and enforcement of the antitrust laws of this state may be brought against any corporation in any county where it has a domicile or place of business, or where any of its officers or agents may be found.

SOURCES: Codes, 1906, § 5010; Hemingway's 1917, § 3292; 1930, § 3445; 1942, § 1097; Laws, 1902, ch. 62.

Cross References — Quo warranto proceedings, see § 11-39-1 et seq.

JUDICIAL DECISIONS

1. In general.

The fact that a nonresident corporate defendant's resident agent for the service of process resided in another county than that in which the acts complained of were committed and in which the suit was commenced, did not render effective a plea to the jurisdiction of the court in a suit under the common law for damages resulting from alleged unfair competition. Memphis Steam Laundry-Cleaners v. Lindsey, 192 Miss. 224, 5 So. 2d 227 (1941).

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations § 2386.

54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 1036 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Form 532.

§ 75-21-21. Proceedings may be brought in county where trust and combine formed.

Like proceedings against any two or more of any number of corporations or individuals, or of corporations and individuals believed to be parties to any trust and combine, may be brought in the county where the trust and combine was formed, or where it exists or is carried on, promoted, operated, practiced, employed, used or enjoyed; or in any county in which either of the defendants may have a domicile, or where an officer or agent of any defendant corporation may be found. And all such proceedings may be prosecuted to final judgment or decree against any one or more of the defendants thereto, notwithstanding there may be a dismissal, acquittal, verdict, judgment or decree in favor of the local or any other defendant.

SOURCES: Codes, 1906, § 5011; Hemingway's 1917, § 3293; 1930, § 3446; 1942, § 1098.

Cross References — Venue of actions, generally, see § 11-11-1 et seq.

RESEARCH REFERENCES

Am Jur. 24 Am. Jur. 2d, Dismissal, Discontinuance, and Nonsuit § 33.

§ 75-21-23. Proceedings may be brought in county where violation of law occurred.

Criminal prosecutions, under the antitrust laws of this state, may be instituted and conducted to final judgment against any one or more of any number of corporations or individuals, or both in any county in which a violation of said laws has been committed by them or in any county in which they formed a trust and combine, or in which such trust and combine, though formed elsewhere, is by them, or any of them, carried on, promoted, employed, operated, used or enjoyed.

SOURCES: Codes, 1906, § 5012; Hemingway's 1917, § 3294; 1930, § 3447; 1942, § 1099.

Cross References — Venue of criminal prosecutions, generally, see § 99-11-3.

§ 75-21-25. Witness not to be excused from testifying.

No person called as a witness in any prosecution or proceeding to enforce the antitrust laws of this state, though himself a defendant therein, or an officer, attorney, agent or employee of a defendant or stockholder in a defendant corporation, shall be excused from testifying upon the ground that his evidence might criminate or tend to criminate himself; but every person, otherwise competent, when called as a witness in such cases, shall be required to testify and to disclose all facts known to him which are pertinent to the issue.

SOURCES: Codes, 1906, § 5013; Hemingway's 1917, § 3295; 1930, § 3448; 1942, § 1100.

JUDICIAL DECISIONS

1. In general.

This section grants immunity to individuals and not corporations. Cumberland Tel. & Tel. Co. v. State, 98 Miss. 159, 53 So. 489 (1910).

§ 75-21-27. Witness not liable to indictment or prosecution.

But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying shall not thereafter be liable to indictment or presentment by information, nor to prosecution or punishment for the offense with reference to which his testimony was given, and may plead or prove the giving of testimony accordingly in bar of such indictment, information or prosecution.

SOURCES: Codes, 1906, § 5014; Hemingway's 1917, § 3296; 1930, § 3449; 1942, § 1101.

JUDICIAL DECISIONS

1. In general.

This section grants immunity to individuals and not to corporations. Cumberland Tel. & Tel. Co. v. State, 98 Miss. 159, 53 So. 489 (1910).

RESEARCH REFERENCES

Am Jur. 54A Am. Jur. 2d, Monopolies, Restraints of Trade, Unfair Trade Practices § 1034.

Lawyers' Edition. Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self-incrimination. 32 L. Ed. 2d 869.

§ 75-21-29. Books, records to be produced in court.

Any corporation may be required under a subpoena duces tecum served upon its president, secretary or any of its directors, to produce in court and submit to inspection upon the trial of any proceeding, civil or criminal, under the antitrust laws of this state, any books, minutes, records, papers, documents, vouchers or writings belonging to or in the possession of such corporation.

SOURCES: Codes, 1906, § 5017; Hemingway's 1917, § 3299; 1930, § 3450; 1942, § 1102.

JUDICIAL DECISIONS

1. In general.

Foreign corporation are entitled to immunity granted by the statute where they are compelled to produce letters relating to violation of law. Cumberland Tel. & Tel. Co. v. State, 98 Miss. 159, 53 So. 489 (1910).

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. Trials 223, Motions for Production and Inspection.

§ 75-21-31. Penalty for failure to comply.

Any corporation failing or refusing to comply with the order of such subpoena duces tecum, when duly served as herein provided, shall be in contempt of court, and shall be punished by a fine of not less than one hundred dollars ($100.00) nor more than two thousand dollars ($2,000.00).

SOURCES: Codes, 1906, § 5019; Hemingway's 1917, § 3300; 1930, § 3451; 1942, § 1103.

§ 75-21-33. Right to examine books, records and accounts of corporations.

The state or any person, natural or artificial, in the manner and in such instances as now provided by law shall always have the right to investigate the books, records and accounts of all corporations created by it and of all corporations doing business in this state, but this right shall not be exercised further than to examine books, records and accounts made and kept within three (3) years next preceding the beginning of the examination thereof, unless an examination of books, records and accounts made before that time be necessary to an understanding of the books, records and accounts made within said three (3) years.

SOURCES: Codes, 1930, § 3452; 1942, § 1104; Laws, 1926, ch. 182.

§ 75-21-35. Corporations answerable for unlawful act.

Every corporation shall be answerable for any unlawful act, contract, agreement, arrangement, understanding or combination done, made or entered into for and on its behalf by any officer, stockholder, agent or attorney permitted or suffered to manage, direct, regulate or control its business in that particular, and such unlawful act, contract, agreement, arrangement, understanding or combination shall be deemed and held to have been done, made or entered into by the corporation itself as fully as if done, made or entered into by its board of directors by regular vote duly entered upon the minutes.

SOURCES: Codes, 1906, § 5015; Hemingway's 1917, § 3297; 1930, § 3453; 1942, § 1105.

§ 75-21-37. Duties of district attorneys.

It shall be the duty of the district attorneys in their several districts, when requested by the attorney general, to enforce the civil features of the antitrust laws of this state by appropriate legal proceedings and suits at law or in equity; and their duty to enforce criminal features of said laws shall be the same as their duty to enforce other criminal statutes. All such suits shall be brought by and in the name of the State of Mississippi upon the relation of the attorney general or an authorized district attorney.

SOURCES: Codes, 1906, § 5016; Hemingway's 1917, § 3298; 1930, § 3454; 1942, § 1106; Laws, 1926, ch. 182.

Cross References — Necessity of attorney general's consent to anti-trust suits brought by district attorneys, see § 25-31-27.

JUDICIAL DECISIONS

1. In general.

Constitutionality of Code 1917, § 3298 (former section relating to duties of district attorneys), will not be determined unless the cause is reversible on ground other than that it was not of equity jurisdiction. Dukate v. Adams, 101 Miss. 433, 58 So. 475 (1911).

§ 75-21-39. Application of chapter.

No right, liability, pain, penalty, forfeiture, prosecution or suit under laws existing prior to the adoption of this chapter shall be in any wise affected thereby, but the same may be asserted, prosecuted, declared, inflicted and imposed under the laws in force prior to the adoption of this chapter. This chapter shall be liberally construed in all courts to the end that trusts and combines may be suppressed, and the benefits arising from competition in business preserved to the people of this state.

SOURCES: Codes, 1906, § 5021; Hemingway's 1917, § 3302; 1930, § 3455; 1942, § 1107.

RESEARCH REFERENCES

ALR. Validity and construction of contract between hospital and physician providing for exclusive medical services. 74 A.L.R.3d 1268.

CHAPTER 23

Fair Trade Laws

Article 1. Unfair Cigarette Sales Law 75-23-1
Article 3. Sale of Cigarettes Intended for Export Prohibited 75-23-31
Article 5. Fair Competition in Sales of Books, Magazines, Etc 75-23-51

ARTICLE 1.

UNFAIR CIGARETTE SALES LAW.

SEC.
75-23-1. Unfair Cigarette Sales Law; title.
75-23-3. Legislative intent.
75-23-5. Definitions.
75-23-7. Sale at less than cost; rebate in price.
75-23-9. Sale at less than cost; combined with gift or concession.
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75-23-13. When provisions of law not applicable.
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75-23-19. How cost determined.
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75-23-23. Injunction.
75-23-25. Rules and regulations.
75-23-27. License required.

§ 75-23-1. Unfair Cigarette Sales Law; title.

This article shall be known and may be cited as the "Unfair Cigarette Sales Law."

SOURCES: Codes, 1942, § 1108.5-01; Laws, 1954, ch. 380, § 1.

Cross References — Fair competition in sales of books, etc., see §§ 75-23-51, 75-23-53.

Prohibition of unfair practices of electric power utilities, see § 77-5-501.

Regulation of insurance business practices, see § 83-5-27 et seq.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Am Jur. 32 Am. Jur. 2d, Fair Trade Laws § 1 et seq.

54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 1249 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Fair Trade Laws, Forms 1-8 (Actions by producer, manufacturer, or distributor).

10 Am. Jur. Pl & Pr Forms (Rev), Fair Trade Laws, Form 21 (actions by retailer).

8 Am. Jur. Trials 359, Trademark Infringement and Unfair Competition Litigation.

CJS. 87 C.J.S., Trademarks, Trade Names, and Unfair Competition § 434 et seq.

Practice References. Jerome Gilson and Anne Gilson LaLonde, Gilson on Trademarks (Matthew Bender).

§ 75-23-3. Legislative intent.

It is hereby declared to be the legislative intent to encourage fair and honest competition, and to safeguard the public against unfair, dishonest, deceptive, destructive, and fraudulent business practices existing in transactions involving the sale of, offer to sell, or inducement to sell, cigarettes in the wholesale and retail trades in this state. It is further declared that the advertising, offering for sale, or sale of cigarettes below cost in the wholesale or retail trades with the intent of injuring competitors or destroying or substantially lessening competition, is an unfair and deceptive trade practice. The policy of the state is to promote the general welfare through the prohibition of such sales, the purpose of the Unfair Cigarette Sales Law being to carry out that policy in the public interest.

SOURCES: Codes, 1942, § 1108.5-02; Laws, 1954, ch. 380, § 2.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Practice References. Jerome Gilson and Anne Gilson LaLonde, Gilson on Trademarks (Matthew Bender).

§ 75-23-5. Definitions.

The following words, terms and phrases, when used in the Unfair Cigarette Sales Law, shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

(a) "Person" shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, the State of Mississippi, county, municipal corporation or other political subdivision of this state, receiver, trustee, fiduciary, or trade association.

(b) "Commission" or "department" shall mean the Department of Revenue of the State of Mississippi.

(c) "Cigarettes" shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco.

(d) "Wholesaler" shall mean and include any person qualified as a wholesaler with the Department of Revenue of Mississippi and shall also mean and include any person other than a buying pool as defined herein, wherever resident or located, who brings or causes to be brought into this state unstamped cigarettes purchased directly from the manufacturer thereof and who maintains an established place of business where substantially all of the business is the sale of cigarettes and related merchandise at wholesale to cigarette licensees and where at all times a substantial stock of cigarettes and related merchandise is available for resale; provided, that seventy-five percent (75%) thereof are sold to retailers or other wholesalers not connected with the wholesaler by reason of any business connection or otherwise; and also any person retailing cigarettes to consumers, provided, at least seventy-five percent (75%) of his purchases are made directly from the manufacturers thereof; and also any person in this state other than a buying pool as defined herein, who purchases cigarettes, from any other person who purchases from a manufacturer at least seventy-five percent (75%) of which are for purposes of resale to retailers in this state not connected with said wholesaler by reason of any business connection or otherwise and who maintains an established place of business where cigarettes and related merchandise are sold at wholesale to persons licensed under this law, and where at all times a substantial stock of cigarettes and related merchandise is available to all retailers for resale; and also any person in this state who acquires cigarettes solely for the purpose of resale in cigarette vending machines; provided, such person operated thirty (30) or more machines.

(e) "Retailer" shall mean and include any person who is engaged in this state in the business of selling cigarettes at retail and includes any group of persons, cooperative organizations, buying pools, and any other person or group of retailers purchasing cigarettes on a cooperative basis from licensed distributors or wholesalers. Any person placing a cigarette vending machine at, on or in any premises shall be deemed to be a retailer from each such vending machine.

(f) "Buying pool" means and includes any combination, corporation, association, affiliation or group of retail dealers operating jointly in the purchase, sale, exchange, or barter of cigarettes, the profits of which accrue directly or indirectly to such retail dealers.

(g) "Sale" or "sell" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale, advertising for sale, soliciting an order for cigarettes and distribution in any manner or by any means whatsoever.

(h) "Sell at wholesale," "sale at wholesale" and "wholesale sales" shall mean and include any sale made in the ordinary course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

(i) "Sell at retail," "sale at retail" or "retail sales" shall mean and include any sale for consumption or use made in the ordinary course of trade or usual conduct of the seller's business.

(j) "Basic cost of cigarettes" shall mean whichever of the two (2) following amounts is lower, namely, (i) the invoice cost of cigarettes to the wholesaler or retailer, as the case may be, or (ii) the lowest replacement cost of cigarettes to the wholesaler or retailer, as the case may be, within thirty (30) days prior to the date of sale, in the quantity last purchased (whether within or before the thirty-day period), less, in either of the two (2) cases, all trade discounts except customary discounts for cash, plus the full face value of any stamps or any tax which may be required by any cigarette tax act of this state or political subdivision thereof, now in effect or hereafter enacted, if not already included in the invoice cost of the cigarettes to the wholesaler or retailer, as the case may be.

(k)(i) "Cost to wholesaler" shall mean the basic cost of the cigarettes involved to the wholesaler plus the cost of doing business by the wholesaler as evidenced by the standards and methods of accounting regularly employed by him, and must include, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising.

(ii) In the absence of proof of a lesser or higher cost of doing business by the wholesale dealer making the sale, the cost of doing business by the wholesale dealer shall be presumed to be two percent (2%) of the basic cost of cigarettes to the wholesale dealer, any fraction of a cent thus computed shall be rounded off to the next highest cent, plus cartage to the retail outlet, if performed or paid for by the wholesale dealer, which cartage cost, in the absence of proof of a lesser or higher cost, shall be presumed to be one-half of one percent (½ of 1%) of the basic cost of the cigarettes to the wholesale dealer, any fraction of a cent in computing the amount of the cartage shall be rounded off to the next highest cent.

(*l*)(i) "Cost to the retailer" shall mean the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as evidenced by the standards and methods of accounting regularly employed by him and must include, without limitation, labor (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising.

(ii) In the absence of proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer shall be presumed to be six percent (6%) of the basic cost of cigarettes to the retailer. Any fraction of a cent thus computed shall be rounded off to the next highest cent.

(iii) In the case of any retail dealer who in connection with the retail dealer's purchase of any cigarettes shall receive not only the discounts ordinarily allowed upon purchases by a retail dealer but also in whole or in part the discounts ordinarily allowed upon purchases by a wholesale dealer, the cost of doing business by the retail dealer with respect to the cigarettes shall be, in the absence of proof of a lesser or higher cost of doing business by the retail dealer, the sum of the cost of doing business by the retail dealer and, to the extent that he shall have received the full discounts ordinarily allowed to a wholesale dealer, the cost of doing business by a wholesale dealer as hereinabove defined in paragraph (j)(ii) of this section.

SOURCES: Codes, 1942, § 1108.5-03; Laws, 1954, ch. 380, § 3; Laws, 1966, ch. 623, § 1; Laws, 2009, ch. 492, § 139, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see § 27-3-1 et seq.

Determination of cost to wholesaler and cost to retailer, see § 75-23-19.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Am Jur. 8 Am. Jur. Legal Forms 2d, Fair Trade Laws § 109:21 et seq. (fair trade contracts).

§ 75-23-7. Sale at less than cost; rebate in price.

(a) It shall be unlawful for any wholesaler or retailer, with intent to injure competitors or destroy or substantially lessen competition, to advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to such wholesaler or retailer, as the case may be. It shall be unlawful for any wholesaler or retailer with intent to injure competitors or destroy or substantially lessen competition to offer a rebate in price, to give a rebate in price, to offer a concession of any kind or to give a concession of any kind or nature whatsoever in connection with the sale of cigarettes. It shall be unlawful for any retail dealer to induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than "cost to wholesaler" and it shall be unlawful for any retail dealer to induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatsoever in connection with the purchase of cigarettes. Any wholesaler or retailer who violates the provisions of this section shall by guilty of a misdemeanor and be punishable by a fine of not more than five hundred dollars ($500.00).

(b) Evidence of advertisement, offering to sell or sale of cigarettes by any wholesaler, or retailer, at less than cost to him, or evidence of any offer of a rebate in price or the giving of a rebate in price or an offer of a concession or the giving of a concession of any kind or nature whatsoever in connection with the sale of cigarettes or the inducing or attempt to induce or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

SOURCES: Codes, 1942, § 1108.5-04; Laws, 1954, ch. 380, § 4.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Unfair cigarette sales law requires proof of intent to both injure competitors and destroy or substantially lessen competition, and mere intent to injure competitors is insufficient; Mississippi unfair cigarette sales law does not violate due process since court cannot conclude that rebate provision bears no rational relation to state's legitimate interest in protecting healthy market competition and in view of fact that legislature is under no duty to pick least restrictive means for furthering its legitimate interests; protection of public from unfair business practices which tend to injure competitors and destroy or substantially lessen competition is necessarily matter affected with public interest and is legitimate goal of legislative action. Corr-Williams Whsle. Co. v. Stacy Williams Co., 622 F. Supp. 156 (S.D. Miss. 1985).

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Validity, construction, and application of state statutory provision prohibiting sales of commodities below cost-modern cases. 41 A.L.R.4th 612.

Validity, construction, and application of state statute forbidding unfair trade practice or competition by discriminatory allowance of rebates, commissions, discounts, or the like. 41 A.L.R.4th 675.

Am Jur. 54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 824, 1048 et seq.

8 Am. Jur. Legal Forms 2d, Fair Trade Laws § 109:21 et seq. (fair trade contracts).

§ 75-23-9. Sale at less than cost; combined with gift or concession.

In all advertisements, offers for sale or sales involving two (2) or more items, at least one (1) of which items is cigarettes, at a combined price, and in all advertisements, offers for sale, or sales, involving the giving of any gift or concession of any kind whatsoever (whether it be coupons or otherwise), the wholesaler's or retailer's combined selling price shall not be below the cost to the wholesaler or the cost to the retailer, respectively, of the total of all articles, products, commodities, gifts and concessions included in such transactions, except that if any such articles, products, commodities, gifts or concessions, shall not be cigarettes, the basic cost thereof shall be determined in like manner as provided in subdivision (j) of Section 75-23-5.

SOURCES: Codes, 1942, § 1108.5-05; Laws, 1954, ch. 380, § 5.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

§ 75-23-11. Sale to another wholesaler.

When one (1) wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter "cost to the wholesaler," as provided by Section 75-23-5 of the Unfair Cigarette Sales Law, but the latter wholesaler, upon resale to a retailer, shall be subject to the provisions of said section.

SOURCES: Codes, 1942, § 1108.5-06; Laws, 1954, ch. 380, § 6.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

§ 75-23-13. When provisions of law not applicable.

The provisions of the Unfair Cigarette Sales Law shall not apply to a sale at wholesale or a sale at retail made (a) in an isolated transaction and not in the usual course of business; (b) where cigarettes are advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in such cigarettes, and said advertising, offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (c) where cigarettes are advertised, offered for sale, or sold as imperfect or damaged, and said advertising, offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (d) where cigarettes are sold upon the final liquidation of a business; or (e) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court; (f) the resale of any of the cigarettes purchased from sales under provisions (c) and (e) above.

SOURCES: Codes, 1942, § 1108.5-07; Laws, 1954, ch. 380, § 7; Laws, 1958, ch. 548.

Cross References — Sale price to meet competition, see § 75-23-15.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

§ 75-23-15. May sell at price to meet competition.

(a) Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to the said competing wholesaler as defined in the Unfair Cigarette Sales Law. Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to the said competing retailer as defined in the Unfair Cigarette Sales Law. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in Section 75-23-13 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(b) In the absence of proof of the actual cost to the said competing wholesaler or the said competing retailer, as the case may be, such cost may be presumed to be the lowest cost to wholesalers or the lowest cost to retailers, as the case may be, within the same trading area as determined by a cost survey made pursuant to in subsection (b) of Section 75-23-19.

SOURCES: Codes, 1942, § 1108.5-08; Laws, 1954, ch. 380, § 8.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

§ 75-23-17. Contracts in violation of law, illegal.

Any contract, express or implied, made by any person in violation of any of the provisions of the Unfair Cigarette Sales Law, is illegal and void and no recovery shall be had thereon.

SOURCES: Codes, 1942, § 1108.5-09; Laws, 1954, ch. 380, § 9.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Am Jur. 8 Am. Jur. Legal Forms 2d, Fair Trade Laws § 109:21 et seq. (fair trade contracts).

§ 75-23-19. How cost determined.

(a) In determining cost to the wholesaler and cost to the retailer the court shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any person complained against under any of the provisions of the Unfair Cigarette Sales Law purchased the cigarettes involved in the complaint before the court, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such costs, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which a violation of the Unfair Cigarette Sales Law is committed or charged, to determine and establish on the basis of actual existing conditions the lowest cost to wholesalers or the lowest cost to retailers within the said area, the said cost survey shall be deemed competent evidence in any action or proceeding under this law as tending to prove actual cost to the wholesaler or actual cost to the retailer complained against, but any party against whom any such cost survey may be introduced in evidence shall have the right to offer evidence tending to prove any inaccuracy of such cost survey or any state of facts which would impair its probative value.

SOURCES: Codes, 1942, § 1108.5-10; Laws, 1954, ch. 380, § 10.

Cross References — Sale price to meet competition, see § 75-23-15.
Rules and regulations, see § 75-23-25.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

§ 75-23-21. Determination of cost of cigarettes purchased outside of ordinary channels of trade.

In establishing the basic cost of cigarettes to a wholesaler or a retailer, it shall not be permissible to use the invoice cost or the actual cost of any cigarettes purchased at a forced, bankrupt, or closeout sale, or other sale outside of the ordinary channels of trade.

SOURCES: Codes, 1942, § 1108.5-11; Laws, 1954, ch. 380, § 11.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

§ 75-23-23. Injunction.

(a) The state tax commission, or any person injured by any violation, or who would suffer injury from any threatened violation of the Unfair Cigarette Sales Law, may maintain an action in any court of equity jurisdiction to prevent, restrain, or enjoin such violation or threatened violation. If in such action a violation or threatened violation of this law shall be established the court shall enjoin and restrain, or otherwise prohibit, such violation or threatened violation, and, in addition thereto, the court shall assess in favor of the plaintiff and against the defendant the costs of suit including reasonable attorney's fees. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and cost of suit, including reasonable attorney's fees shall be entitled to recover from the defendant the actual damages sustained by him.

(b) In the event that no injunctive relief is sought or required, any person injured by a violation of Unfair Cigarette Sales Law may maintain an action for damages and costs of suit in any court of general jurisdiction.

SOURCES: Codes, 1942, § 1108.5-12; Laws, 1954, ch. 380, § 12.

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" appearing in the laws of this state in connection with the performance of the duties and functions of the Mississippi State Tax Commission shall mean Department of Revenue.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

§ 75-23-25. Rules and regulations.

The State Tax Commission shall prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of the Unfair Cigarette Sales Law.

The commission is hereby empowered to and may from time to time undertake and make or cause to be made one or more cost surveys for the state or such trading area or areas as it shall define and when a cost survey shall have been made by or approved by it, it shall be permissible to use the cost survey as provided in Section 75-23-19(b). The commission may revoke or suspend the license issued under the provisions of this law or the tobacco tax law of this state, of any person who refuses or neglects to comply with any provisions of this article or any rule or regulation of the commission prescribed under this article.

Whenever any person fails to comply with any provision of the Unfair Cigarette Sales Law or any rule or regulation of the commission promulgated thereunder, the commission, or a hearing officer or the board of review, as designated by the commissioner, after a show cause hearing, may revoke or suspend the license held by the person.

Any ruling, order or decision of the commission shall be subject to review, as provided by law, in any court of competent jurisdiction in the county in which the person affected resides.

SOURCES: Codes, 1942, § 1108.5-13; Laws, 1954, ch. 380, § 13; Laws, 2005, ch. 499, § 33, eff from and after July 1, 2005.

Editor's Note — Section 27-3-4 provides that the terms "State Tax Commission" and "commission" appearing in the laws of this state in connection with the performance of the duties and functions of the Mississippi State Tax Commission shall mean Department of Revenue or department.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Practice References. Trademark Protection and Practice (CDROM-Matthew Bender).

§ 75-23-27. License required.

After March 24, 1954, no person shall engage in or conduct the business of purchasing for resale or selling cigarettes without having first obtained the appropriate license for that purpose.

All such licenses shall be issued by the state tax commission or its designated agent, who shall make rules and regulations respecting applications therefor and issuance thereof.

A wholesaler or retailer who sells or intends to sell cigarettes at one, two (2) or more places of business shall be required to obtain a separate license for each place of business.

Any person licensed only as a wholesaler shall not operate as a retailer unless the appropriate license therefor is first secured, and any person licensed only as a retailer shall not operate as a wholesaler unless the appropriate license therefor is first secured.

SOURCES: Codes, 1942, § 1108.5-14; Laws, 1954, ch. 380, § 14.

Editor's Note — Section 27-3-4 provides that the term "state tax commission" appearing in the laws of this state in connection with the performance of the duties and functions of the Mississippi State Tax Commission means Department of Revenue.

Cross References — Revocation and suspension of license, see § 75-23-37.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

ARTICLE 3.

SALE OF CIGARETTES INTENDED FOR EXPORT PROHIBITED.

SEC.	
75-23-31.	Definitions.
75-23-33.	Prohibited acts.
75-23-35.	Penalties.
75-23-37.	Revocation and suspension of licenses and permits to sell tobacco; seizure, forfeiture, and destruction of contraband cigarettes.
75-23-39.	Presumption that imported cigarettes with confusingly similar trade name or trademark to that of domestic brand have been purchased outside ordinary channels of trade.
75-23-41.	Enforcement of this article; injunctive or other equitable relief.

75-23-43. This article inapplicable to cigarettes imported for personal use and/or sold as duty-free merchandise; penalties additional to other penalties.

§ 75-23-31. Definitions.

As used in this article:

(a) "Commission" or "department" means the Mississippi Department of Revenue.

(b) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(c) "Person" means any individual, firm, association, agency, syndicate, the State of Mississippi, county, municipal corporation or other political subdivision of this state, receiver, trustee, fiduciary or trade association.

SOURCES: Laws, 2000, ch. 596, § 1; Laws, 2009, ch. 492, § 140, eff from and after July 1, 2010.

Editor's Note — Laws of 2000, ch. 596, § 9, provides:

"SECTION 9. The provisions of Sections 1 through 7 of this act shall be codified as a new article in Chapter 23, title 75, Mississippi Code of 1972."

Laws of 2009, ch. 492, effective July 1, 2010, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see § 27-3-1 et seq.

Taxes on tobacco products, see § 27-69-1 et seq.

Unfair Cigarette Sales Law, see § 75-23-1 et seq.

§ 75-23-33. Prohibited acts.

It shall be unlawful for any person:

(a) To sell or distribute in this state or to acquire, hold, own, possess or transport, for sale or distribution in this state; or to import, or cause to be imported, into this state for sale or distribution in this state:

(i) Any cigarettes the package of which:

1. Bears any statement, label, stamp, sticker or notice indicating that the manufacturer did not intend the cigarettes to be sold, distrib-

uted or used in the United States, including, but not limited to, labels stating "For Export Only," "U.S. Tax-Exempt," "For Use Outside U.S." or similar wording; or

2. Does not comply with:

a. All requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States, including, but not limited to, the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act, 15 USCS 1333; and

b. All federal trademark and copyright laws;

(ii) Any cigarettes imported into the United States in violation of 26 USCS 5754 or any other federal law, or implementing federal regulations;

(iii) Any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or

(iv) Any cigarettes for which there has not been submitted to the Secretary of the United States Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 USCS 1335a;

(b) To alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

(i) Any statement, label, stamp, sticker or notice described in paragraph (a)(i)1 of this section;

(ii) Any health warning that is not specified in, or does not conform with the requirements of, the Federal Cigarette Labeling and Advertising Act, 15 USCS 1333; or

(c) To affix any stamp required pursuant to Chapter 69, Title 27, Mississippi Code of 1972, to the package of any cigarettes described in paragraph (a) of this section or altered in violation of paragraph (b) of this section.

SOURCES: Laws, 2000, ch. 596, § 2, eff from and after passage (approved May 20, 2000.)

Federal Aspects — Federal Cigarette Labeling and Advertising Act, see 15 USCS § 1331 et seq.

Internal Revenue Code — federal taxes on tobacco products, see 26 USCS § 5701 et seq.

Restriction on importation of previously exported tobacco products, see 26 USCS § 5754.

§ 75-23-35. Penalties.

Any person who commits any of the acts prohibited by Section 75-23-33, either knowing or having reason to know he is doing so, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than

Five Thousand Dollars ($5,000.00) or imprisonment of not more than five (5) years, or both.

SOURCES: Laws, 2000, ch. 596, § 3, eff from and after passage (approved May 20, 2000.)

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violations, see § 99-19-73.

§ 75-23-37. Revocation and suspension of licenses and permits to sell tobacco; seizure, forfeiture, and destruction of contraband cigarettes.

(1) Upon finding a violation of this article or a regulation promulgated pursuant to this article, the commission may revoke or suspend the license or licenses of any permittee pursuant to the procedures set forth in Section 27-69-9 and may also impose on the permittee a civil penalty in an amount not to exceed the greater of five hundred percent (500%) of the retail value of the cigarettes involved or Five Thousand Dollars ($5,000.00).

(2) Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this state in violation of this article shall be deemed contraband under Sections 27-69-53 through 27-69-57 and shall be subject to seizure and forfeiture as provided therein. Such cigarettes so seized and forfeited shall be destroyed. Such cigarettes shall be deemed contraband whether the violation of this article is knowing or otherwise.

SOURCES: Laws, 2000, ch. 596, § 4, eff from and after passage (approved May 20, 2000.)

Cross References — Revocation of permit to sell tobacco for violation of tobacco tax provisions, see § 27-69-5.

Confiscation of tobacco products for violation of tobacco tax provisions, see §§ 27-69-53 through 27-69-57.

§ 75-23-39. Presumption that imported cigarettes with confusingly similar trade name or trademark to that of domestic brand have been purchased outside ordinary channels of trade.

For purposes of this chapter, cigarettes imported or reimported into the United States for sale or distribution under any trade name, trade dress or trademark that is the same as, or is confusingly similar to, any trade name, trade dress or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States shall be presumed to have been purchased outside of the ordinary channels of trade.

SOURCES: Laws, 2000, ch. 596, § 5, eff from and after passage (approved May 20, 2000.)

§ 75-23-41. Enforcement of this article; injunctive or other equitable relief.

(1) This article shall be enforced by the Attorney General, local district attorneys and local county prosecuting attorneys. The authority enforcing this article may request the assistance of local law enforcement agencies, and local law enforcement agencies receiving a request for assistance in the enforcement of this article shall provide the necessary assistance.

(2) The commission may provide assistance to the enforcing authority, including, but not limited to, the providing of information to the enforcing authority. The commission and any enforcing authority may request information from each other and from any other state agency, local or federal agency, or permittee.

(3) In addition to any other remedy provided by law, any person may bring an action for appropriate injunctive or other equitable relief, actual damages, if any, sustained by reason of a violation of this article, interest, reasonable attorney's fees and court costs. For purposes of promoting enforcement of this article, information identifying which permittee affixed the tax stamp to a particular package of cigarettes shall be public information.

(4) If the trier of fact finds that the violation is egregious, it may increase recovery to an amount not in excess of three (3) times the actual damages sustained by reason of the violation.

SOURCES: Laws, 2000, ch. 596, § 6, eff from and after passage (approved May 20, 2000.)

§ 75-23-43. This article inapplicable to cigarettes imported for personal use and/or sold as duty-free merchandise; penalties additional to other penalties.

(1) This article shall not apply to:

(a) Cigarettes allowed to be imported or brought into the United States for personal use; and

(b) Cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 USCS 1555(b) and any implementing regulations; provided, however, that this article shall apply to any such cigarettes that are brought back into the customs territory for resale within the customs territory.

(2) The penalties provided in this article are in addition to any other penalties imposed under other law.

SOURCES: Laws, 2000, ch. 596, § 7, eff from and after passage (approved May 20, 2000.)

Federal Aspects — Bonded warehouses and duty-free sales enterprises, see 19 USCS § 1555.

ARTICLE 5.

FAIR COMPETITION IN SALES OF BOOKS, MAGAZINES, ETC.

SEC.	
75-23-51.	Fair competition in sales of books, magazines and other printed matter; public protected.
75-23-53.	Fair competition in sales of books, magazines and other printed matter; contracts in violation of antitrust laws.

§ 75-23-51. Fair competition in sales of books, magazines and other printed matter; public protected.

It is hereby declared to be the legislative intent to encourage fair and honest competition; and to provide the retail merchants of this state with a freedom of choice concerning those books, pamphlets, magazines, periodicals, newspapers, picture magazines, comic books, story papers, and/or similar printed or written matters or materials which they might desire to offer for sale within their individual establishments; and to safeguard the public from exposure to printed or written materials or matters which appeal to the prurient interest, and concerning which the retail merchants of this state, or any one or more of them, might not desire to voluntarily offer for sale within their individual establishments.

SOURCES: Codes, 1942, § 1108.5-21; Laws, 1966, ch. 385, § 1, eff from and after July 1, 1966.

Cross References — Purchase of school textbooks, see § 37-43-27.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Am Jur. 32 Am. Jur. 2d, Fair Trade Laws § 1 et seq.

54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 1085 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Fair Trade Laws, Forms 1-8 (actions by producer, manufacturer, or distributor).

10 Am. Jur. Pl & Pr Forms (Rev), Fair Trade Laws, Forms 21 (actions by retailers).

8 Am. Jur. Trials 359, Trademark Infringement and Unfair Competition Litigation.

CJS. 87 C.J.S., Trademarks, Trade Names, and Unfair Competition § 434 et seq.

Practice References. Jerome Gilson and Anne Gilson LaLonde, Gilson on Trademark (Matthew Bender).

§ 75-23-53. Fair competition in sales of books, magazines and other printed matter; contracts in violation of antitrust laws.

Any contract or agreement of any nature which would, directly or indirectly, require, or result in requiring, any retail merchant located in this state to obtain or offer for sale within his individual establishment any books, pamphlets, magazines, periodicals, newspapers, picture magazines, comic books, story papers, and/or similar printed or written matters or materials, other than those which he might voluntarily select for such purpose, or as a requirement or condition to obtaining those he might voluntarily select for such purpose, shall be deemed to be a contract or agreement in restraint of the freedom of trade and a violation of the antitrust laws of this state; and the party offering such contract or agreement shall be subject to all the laws of this state pertaining to the operation of trusts and combines. In addition, the said contract or agreement shall be deemed void and cannot be enforced in any court.

SOURCES: Codes, 1942, § 1108.5-22; Laws, 1966, ch. 385, § 2, eff from and after July 1, 1966.

Cross References — Antitrust law, see § 75-21-1 et seq.

RESEARCH REFERENCES

ALR. Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

CHAPTER 24

Regulation of Business for Consumer Protection

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GENERAL PROVISIONS

Sec.
75-24-1. Creation of office of consumer protection.
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75-24-29. Persons conducting business in Mississippi required to provide notice of a breach of security involving personal information to all affected individuals; enforcement.

§ 75-24-1. Creation of office of consumer protection.

There is hereby created and established within the office of the attorney general an "Office of Consumer Protection," which shall be charged with the administration of this chapter. The attorney general is hereby authorized and empowered to employ the necessary personnel to carry out the provisions of this chapter.

SOURCES: Laws, 1974, ch. 555, § 1, eff from and after July 1, 1974.

Cross References — Office of attorney general, see § 7-5-1 et seq.

Applicability of the rights and remedies provided for by this chapter to violations of the Motor Vehicle Warranty Enforcement Act (§§ 63-17-151 et seq.), see § 63-17-165.

Regulation of dance studios, see § 75-81-101 et seq.

Registration of dance studios with Division of Consumer Protection, see § 75-81-111.

JUDICIAL DECISIONS

1. In general.

Operator of internet search engine was entitled to injunction against defendant state Attorney General's alleged demands and threats of civil and criminal prosecution regarding certain material originating from third parties because there was substantial likelihood that internet provider would prevail on its First Amendment and other claims, including that subpoena under Mississippi Consumer Protection Act either violated or was preempted by Communications Decency Act, Digital Millennium Copyright Act, and Food, Drug and Cosmetic Act. Google, Inc. v. Hood, — F. Supp. 2d —, 2015 U.S. Dist. LEXIS 49310 (S.D. Miss. Mar. 27, 2015).

In a case in which buyers of a demonstrator vehicle sued a car dealership for claims related to the purchase of the vehicle, which had been damaged in an automobile accident, summary judgment for the dealership was reversed where genuine issues of material fact existed regarding whether the dealership was under a duty to disclose the repaired damage to the vehicle prior to purchase, whether the language of the purchase contract was sufficient to place the buyers on notice of the damage to the vehicle from the prior accident, and whether the dealership violated the Consumer Protection Act when selling the vehicle to the buyers. Holman v. Howard Wilson Chrysler Jeep, Inc., — So. 2d —, 2007 Miss. LEXIS 544 (Miss. Sept. 27, 2007), opinion withdrawn by, substituted opinion at, remanded by 972 So. 2d 564, 2008 Miss. LEXIS 28 (Miss. 2008).

RESEARCH REFERENCES

ALR. What is "consumer product" for purposes of Consumer Product Safety Act (15 USCS § 2051 et seq). 43 A.L.R. Fed. 827.

Consumer product warranty suits in federal court under Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (15 USCS § 2301 et seq). 59 A.L.R. Fed. 461.

Civil penalties under § 20 of Consumer Product Safety Act (15 USCS § 2069). 70 A.L.R. Fed. 617.

Law Reviews. Robinson III, Mississippi Statutory Claims for False Advertising, 20 Miss. C. L. Rev. 165 (Fall, 1999).

Practice References. Consumer Credit Law Manual (Matthew Bender).

Kenneth M. Lapine, Consumer Credit: Laws, Transactions and Forms (Matthew Bender).

§ 75-24-3. Definitions.

As used in this chapter:

(a) "Person" means natural persons, corporations, trusts, partnerships, incorporated and unincorporated associations, and any other legal entity.

(b) "Trade" and "commerce" mean the advertising, offering for sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include without limitation, both domestic and foreign persons, irrespective of their having qualified to do business within the state and any trade or commerce directly or indirectly affecting the people of this state.

(c) It is the intent of the Legislature that in construing what constitutes unfair or deceptive trade practices that the courts will be guided by the interpretations given by the Federal Trade Commission and the federal courts to Section 5(a)(1) of the Federal Trade Commission Act (15 USCS 45(a)(1)) as from time to time amended.

SOURCES: Laws, 1974, ch. 555, § 2; Laws, 1994, ch. 537, § 1, eff from and after passage (approved March 29, 1994).

Cross References — Applicability of the rights and remedies provided for by this chapter to violations of the Motor Vehicle Warranty Enforcement Act (§ 63-17-151 et seq.), see § 63-17-165.

Use of certain promotional devices for interests in real property without disclosure as unfair or deceptive act in the conduct of trade or commerce, see § 75-24-101.

JUDICIAL DECISIONS

1. Removal of action to federal court.
2. Medicaid fraud.

1. Removal of action to federal court.

Where a jewelry company and its insurers removed to the federal district court an action filed by Mississippi residents based on diversity of citizenship under 28 USCS § 1332, the residents were not entitled to remand under 28 U.S.C.S. § 1447 because the residents fraudulently joined certain employees of the jewelry company as resident defendants; there was no reasonable possibility of recovery against the resident defendants on the claim under the Mississippi Unfair or Deceptive Acts and Practices Act, Miss. Code Ann. § 75-24-3 et seq., or on any other claim related to the allegedly fraudulent jewelry loans. Rawls v. Friedman's Inc., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 21333 (S.D. Miss. June 27, 2003).

2. Medicaid fraud.

Pharmaceutical provider violated the Mississippi Consumer Protection Act because the provider reported false drug prices to a third party knowing the State of Mississippi would rely on that information to calculate Medicaid reimbursements to pharmacies for those drugs, as (1) this caused substantial injury to the State with no countervailing benefit to consumers or competition, and (2) the State reasonably relied on the false information. Sandoz, Inc. v. State (In re Miss. Medicaid Pharm. Average Wholesale Price Litig.), — So. 3d —, 2015 Miss. LEXIS 545 (Miss. Oct. 29, 2015).

§ 75-24-5. Prohibited acts or practices.

(1) Unfair methods of competition affecting commerce and unfair or deceptive trade practices in or affecting commerce are prohibited. Action may be brought under Section 75-24-5(1) only under the provisions of Section 75-24-9.

(2) Without limiting the scope of subsection (1) of this section, the following unfair methods of competition and unfair or deceptive trade practices or acts in the conduct of any trade or commerce are hereby prohibited:

(a) Passing off goods or services as those of another;

(b) Misrepresentation of the source, sponsorship, approval, or certification of goods or services;

(c) Misrepresentation of affiliation, connection, or association with, or certification by another;

(d) Misrepresentation of designations of geographic origin in connection with goods or services;

(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(f) Representing that goods are original or new if they are reconditioned, reclaimed, used, or secondhand;

(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(h) Disparaging the goods, services, or business of another by false or misleading representation of fact;

(i) Advertising goods or services with intent not to sell them as advertised;

(j) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(k) Misrepresentations of fact concerning the reasons for, existence of, or amounts of price reductions;

(*l*) Advertising by or on behalf of any licensed or regulated health care professional which does not specifically describe the license or qualifications of the licensed or regulated health care professional;

(m) Charging an increased premium for reinstating a motor vehicle insurance policy that was cancelled or suspended by the insured solely for the reason that he was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve. It is also an unfair practice for an insurer to charge an increased premium for a new motor vehicle insurance policy if the applicant for coverage or his covered dependents were previously insured with a different insurer and canceled that policy solely for the reason that he was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve. For purposes of determining premiums, an insurer shall consider such persons as having maintained continuous coverage. The provisions of this paragraph (m) shall apply only to such instances when the insured does not drive the vehicle during the period of cancellation or suspension of his policy.

SOURCES: Laws, 1974, ch. 555, § 3; Laws, 1994, ch. 537, § 2; Laws, 2001, ch. 403, § 1; Laws, 2006, ch. 317, § 1, eff from and after passage (approved Mar. 1, 2006.)

Cross References — Applicability of the rights and remedies provided for by this chapter to violations of the Motor Vehicle Warranty Enforcement Act (§ 63-17-151 et seq.), see § 63-17-165.

Civil penalties for knowing, willing violation of this section, see § 75-24-19.

Criminal penalties for knowing and willful violation of this section, see § 75-24-20.

Additional powers of Attorney General to enforce chapter, see § 75-24-27.

Prohibition of use of certain promotional devices for interests in real property unless certain disclosures are made, see § 75-24-101.

Consumer contracts with health spas, see § 75-83-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Private right of action.

1. In general.

Genuine issue of material fact existed concerning whether the car dealership sold the customers the demonstrator car as a new vehicle; therefore, summary judgment in favor of the dealership was inappropriate. Holman v. Howard Wilson Chrysler Jeep, Inc., 972 So. 2d 564 (Miss. 2008).

Mississippi Court of Appeals held that an automobile insurance policy is not "merchandise" subject to the provisions of the Mississippi Consumer Protection Act, and therefore a motion to dismiss for failure to state a claim was granted in an action under Miss. Code Ann. § 75-24-5 based on an allegation that an insurer fraudulently used an information service to obtain lower values on vehicles that were a total loss; moreover, an insured failed to attempt to resolve the claim, as required by Miss. Code Ann. § 75-24-15(2). Taylor v. Southern Farm Bureau Casualty Co., 954 So. 2d 1045 (Miss. Ct. App. 2007).

In an action in which the purchaser of a truck alleged that the seller had represented a used truck as a new one in violation of Mississippi's Consumer Protection Act (§ 75-24-1 et seq.) and the Mississippi Motor Vehicle Commission Law (§ 63-17-51 et seq.), the trial judge did not err in finding, as a matter of law, that the truck was new, even though a third party had previously attempted to purchase the truck but had returned it one week after driving it home, where no title had ever been issued to the third party, and the purchaser was told at the time of the sale that there were 1,790 miles on the odometer because the truck had either been test driven or had been the subject of a sale that had fallen through. Hernandez v. Vickery Chevrolet-Oldsmobile Co., 652 So. 2d 179 (Miss. 1995).

In an action in which the purchaser of a truck alleged that the seller had represented a used truck as a new one in violation of Mississippi's Consumer Protection Act (§ 75-24-1 et seq.) and the Mississippi Motor Vehicle Commission Law (§ 63-17-51 et seq.), the trial court did not err in failing to consider § 75-2-401(2), which pertains to passing of title, since the issue was whether the truck was new or used when it was purchased and this question could be answered without exceeding the confines of the Motor Vehicle Commission Law and the Motor Vehicle Title Law (§ 63-21-1 et seq.). Hernandez v. Vickery Chevrolet-Oldsmobile Co., 652 So. 2d 179 (Miss. 1995).

Major construction defect insurance policy was not "goods" or "service" within meaning of state's Consumer Protection Act. Burley v. Homeowners Warranty Corp., 773 F. Supp. 844 (S.D. Miss. 1990), aff'd, 936 F.2d 569 (5th Cir. 1991).

A plaintiff's allegation that the defendants stated that they would complete a residence within 90 days when they knew that it could not be completed within that time and that they did not intend to complete it within 90 days did not fall within the purview of § 75-24-5(i) which proscribes advertising goods or services with intent not to sell them as advertised; the term "advertising" used in that subsection is intended to mean advertising and offering to the general public and does not include representations made during the negotiation process for the purchase of a particular item or items. Moreover, where a party charges a violation under § 75-24-5 and is not successful in recovering under that charge, the opposing (prevailing) party is entitled to attorney's fees for defending the allegation even though it is not determined that the allegations did not in fact come within the purview of the section. Deer Creek Constr. Co. v. Peterson, 412 So. 2d 1169 (Miss. 1982).

Trial court properly found that defendant art dealers had engaged in deceitful and unfair advertising where the evidence showed that 90 percent of the paintings came from Hong Kong and where witnesses testified that the advertisements, even though defendants' advertisements had claimed they were the work of local artists, had persuaded them to attend the art sales and that they probably would not have attended had they known the true facts. Southwest Starving Artists Group, Inc. v. State ex rel. Summer, 364 So. 2d 1128 (Miss. 1978).

2. Private right of action.

In its suit seeking payment of an unpaid patient bill from a preferred provider organization, a hospital was not entitled to bring a private cause of action under Miss. Code Ann. §§ 75-24-15, 75-24-5 of the Mississippi Consumer Protection Act because the hospital was not an individual who purchased a good for personal or family purposes and instead was a provider of services for commercial, for-profit reasons. River Region Med. Corp. v. Am. Lifecare, Inc., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 21693 (S.D. Miss. Mar. 17, 2008).

RESEARCH REFERENCES

ALR. Failure to deliver ordered merchandise to customer on date promised as unfair or deceptive trade practice. 7 A.L.R.4th 1257.

Automobile repairman's duty to provide customer with information, estimates, or replaced parts, under automobile repair consumer protection act. 25 A.L.R.4th 506.

Validity, construction, and application of state statutory provision prohibiting sales of commodities below cost—modern cases. 41 A.L.R.4th 612.

Validity, construction, and application of state statute forbidding unfair trade practice or competition by discriminatory allowance of rebates, commissions, discounts, or the like. 41 A.L.R.4th 675.

What constitutes "fraudulent" or "unconscionable" agreement or conduct within meaning of state consumer protection act. 42 A.L.R.4th 293.

Health provider's agreement as to patient's copayment liability after award by professional service insurer as unfair trade practice under state law. 49 A.L.R.4th 1240.

What goods or property are "used," "secondhand," or the like, for purposes of state consumer laws prohibiting claims that such items are new. 59 A.L.R.4th 1192.

Implied warranty coverage for service transactions under state consumer protection and deceptive trade statutes. 72 A.L.R.4th 282.

Coverage of insurance transactions under state consumer protection statutes. 77 A.L.R.4th 991.

Constitutional right to jury trial in cause of action under state unfair or deceptive trade practices law. 54 A.L.R.5th 631.

World Wide Web domain as violating state trademark protection statute or state Unfair Trade Practices Act. 96 A.L.R.5th 1.

Validity, Construction, and Application of State Statute Forbidding Unfair Trade Practice or Competition by Discriminatory Allowance of Rebates, Commissions, Discounts, or the Like. 83 A.L.R.6th 419.

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 272 et seq.

54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 1066 et seq.

Practice References. Consumer Credit Law Manual (Matthew Bender).

Kenneth M. Lapine, Consumer Credit: Laws, Transactions and Forms (Matthew Bender).

§ 75-24-7. Exemptions from provisions of chapter.

Nothing in this chapter shall apply to acts done by:

(a) The publisher, owner, agent or employee of a newspaper, periodical, printing shop, directory or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and did not have a direct financial interest in the sale or distribution of the advertised product or service.

(b) Any officer acting under the orders of any court.

SOURCES: Laws, 1974, ch. 555, § 4, eff from and after July 1, 1974.

Cross References — Applicability of the rights and remedies provided for by this chapter to violations of the Motor Vehicle Warranty Enforcement Act (§ 63-17-151 et seq.), see § 63-17-165.

Prohibition of use of certain promotional devices for interests in real property unless certain disclosures are made, see § 75-24-101.

RESEARCH REFERENCES

ALR. Successor products liability: form of business organization of successor or predecessor as affecting successor liability. 32 A.L.R.4th 196.

§ 75-24-9. Injunction to restrain or prevent violation.

Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice prohibited by Section 75-24-5, and that proceedings would be in the public interest, he may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice. The action shall be brought in the chancery or county court of the county in which such person resides or has his principal place of business, or, with consent of the parties, may be brought in the chancery or county court of the county in which the State Capitol is located. The said courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter, and such injunctions shall be issued without bond.

SOURCES: Laws, 1974, ch. 555, § 5; Laws, 1994, ch. 537, § 3, eff from and after passage (approved March 29, 1994).

Cross References — Additional orders or judgments, see § 75-24-11.

Penalties for violating terms of injunction issued under this section, see § 75-24-19.

Application of this section to prevent unlawful pyramid sales schemes or cancellations of franchises, see § 75-24-59.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 297 et seq.

54 Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 621 et seq.

Law Reviews. Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 75-24-11. Additional orders or judgments; appointment of receiver; revocation of license or certificate to do business.

The court may make such additional orders or judgments, including restitution, as may be necessary to restore to any person in interest any monies or property, real or personal, which may have been acquired by means of any practice prohibited by this chapter, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

SOURCES: Laws, 1974, ch. 555, § 6; Laws, 1994, ch. 537, § 4, eff from and after passage (approved March 29, 1994).

Cross References — Applicability of the rights and remedies provided for by this chapter to violations of the Motor Vehicle Warranty Enforcement Act (§ 63-17-151 et seq.), see § 63-17-165.

Powers of receivers, see § 75-24-13.

§ 75-24-13. Powers of receivers; right of injured party to participate; jurisdiction of court.

When a receiver is appointed by the court pursuant to this chapter, he shall have the power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice prohibited by this chapter, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and collect or to bring suit to collect in the name of the state for and on behalf of the owner of any chose in action, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use of employment of any practices prohibited by this chapter, and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. The receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

SOURCES: Laws, 1974, ch. 555, § 7, eff from and after July 1, 1974.

Cross References — Applicability of the rights and remedies provided for by this chapter to violations of the Motor Vehicle Warranty Enforcement Act (§ 63-17-151 et seq.), see § 63-17-165.

RESEARCH REFERENCES

ALR. Liability of repairer for unauthorized, unnecessary, or fraudulent repairs of motor vehicle. 23 A.L.R.4th 274.

§ 75-24-15. Action or counterclaim by individual suffering loss; class actions prohibited.

(1) In addition to all other statutory and common law rights, remedies and defenses, any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by the seller, lessor, manufacturer or producer of a method, act or practice prohibited by Section 75-24-5 may bring an action at law in the court having jurisdiction in the county in which the seller, lessor, manufacturer or producer resides, or has his principal place of business or, where the act or practice prohibited by Section 75-24-5 allegedly occurred, to recover such loss of money or damages for the loss of such property, or may assert, by way of setoff or counterclaim, the fact of such loss in a proceeding against him for the recovery of the purchase price or rental, or any portion thereof, of the goods or services.

(2) In any private action brought under this chapter, the plaintiff must have first made a reasonable attempt to resolve any claim through an informal dispute settlement program approved by the Attorney General.

(3) In any action or counterclaim under this section of this chapter, a prevailing defendant may recover in addition to any other relief that may be provided in this section costs and a reasonable attorney's fee, if in the opinion of the court, said action or counterclaim was frivolous or filed for the purpose of harassment or delay.

(4) Nothing in this chapter shall be construed to permit any class action or suit, but every private action must be maintained in the name of and for the sole use and benefit of the individual person.

SOURCES: Laws, 1974, ch. 555, § 8; Laws, 1994, ch. 537, § 5, eff from and after passage (approved March 29, 1994).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed "as a result of the use of employment" to "as a result of the use or employment" in subsection (1). The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Applicability of the rights and remedies provided for by this chapter to violations of the Motor Vehicle Warranty Enforcement Act (§ 63-17-151 et seq.), see § 63-17-165.

Remedy and proceedings authorized by this section being applicable to persons promoting pyramid sales schemes, see § 75-24-57.

Consumer's private right of action for violation of consumer protection statutes concerning dance studios, see § 75-81-119.

JUDICIAL DECISIONS

1. In general.
2. Informal resolution required.
3. Class actions barred.
4. Private right of action.

1. In general.

Consumers' claim that several corporations involved in the gasoline industry had committed price gouging in violation of the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1 et seq., was dismissed where they failed to allege that they had made a purchase as required by Miss. Code Ann. §§ 75-24-15 and 75-24-25, and that failure could not be cured by amendment because many of the named corporations did not sell gasoline directly to Mississippi consumers. Cole v. Chevron USA, Inc., 554 F. Supp. 2d 655 (S.D. Miss. 2007).

Mississippi Court of Appeals held that an automobile insurance policy is not "merchandise" subject to the provisions of the Mississippi Consumer Protection Act, and therefore a motion to dismiss for failure to state a claim was granted in an action under Miss. Code Ann. § 75-24-5 based on an allegation that an insurer fraudulently used an information service to obtain lower values on vehicles that were a total loss; moreover, an insured failed to attempt to resolve the claim, as required by Miss. Code Ann. § 75-24-15(2). Taylor v. Southern Farm Bureau Casualty Co., 954 So. 2d 1045 (Miss. Ct. App. 2007).

A prevailing plaintiff in a deceptive trade practices action was not entitled to attorney's fees, although § 75-24-15(2) provided for an award of attorney's fees to a prevailing plaintiff in such actions at the time the plaintiff filed his original complaint and when he filed an amended complaint which added the deceptive trade practices claim, since (1) the amended version of § 75-24-15, which eliminated the provision for an award of attorney's fees to prevailing plaintiffs, became effective 3 months before the case was tried, and applied to the case, and (2) the plaintiff never acquired any "right" to recover attorney's fees for violation of the deceptive trade practices statute, for only when he prevailed would he have been entitled to recover the fees, even under the former version of § 75-24-15. Wilson v. Nelson Hall Chevrolet, Inc., 871 F. Supp. 279 (S.D. Miss. 1994), aff'd in part, 77 F.3d 479 (5th Cir. 1996).

2. Informal resolution required.

In a case in which a musical artist had sued an entertainment company alleging a claim for unfair competition under Mississippi law, but the artist had not first attempted to resolve the claim through the informal dispute settlement program established by the Attorney General, as required by Miss. Code Ann. § 75-24-15(2), the artist's claim was barred. Montalto v. Viacom Int'l, Inc., 545 F. Supp. 2d 556 (S.D. Miss. 2008).

Husband and wife's argument that the trial court improperly granted summary judgment in favor of the agent, lending company, and others, on the husband's and wife's claim under Miss. Code Ann. § 75-24-15 was improper because the husband and wife admitted that they did not take any steps to resolve the claim through informal resolution as required by § 75-24-15(2). Dominquez v. Palmer, 970 So. 2d 737 (Miss. Ct. App. 2007).

Consumers' claim that several corporations involved in the gasoline industry had committed price gouging in violation of the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1 et seq., was dismissed where they failed to attempt informal pre-suit resolution, as required by Miss. Code Ann. § 75-24-15(2). Cole v. Chevron USA, Inc., 554 F. Supp. 2d 655 (S.D. Miss. 2007).

3. Class actions barred.

Class action bar was applied to bar the consumers' class action claims of price gouging against several corporations involved in the gasoline industry because, under the Erie doctrine, Miss. Code Ann. § 75-24-15(4) was a substantive law that did not directly collide with Fed. R. Civ. P. 23. Cole v. Chevron USA, Inc., 554 F. Supp. 2d 655 (S.D. Miss. 2007).

4. Private right of action.

In its suit seeking payment of an unpaid patient bill from a preferred provider organization, a hospital was not entitled to bring a private cause of action under Miss. Code Ann. §§ 75-24-15, 75-24-5 of the Mississippi Consumer Protection Act because the hospital was not an individual who purchased a good for personal or family purposes and instead was a provider of services for commercial, for-profit reasons. River Region Med. Corp. v. Am. Lifecare, Inc., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 21693 (S.D. Miss. Mar. 17, 2008).

RESEARCH REFERENCES

ALR. Consumer class actions based on fraud or misrepresentation. 53 A.L.R.3d 534.

Right of state, public official, or governmental entity to seek, or power of court to allow, restitution of fruits of consumer fraud, without specific statutory authorization. 55 A.L.R.3d 198.

Validity of statute allowing attorneys' fees to successful claimant but not to defendant, or vice versa. 73 A.L.R.3d 515.

Award of attorneys' fees in actions under state deceptive trade practice and consumer protection acts. 35 A.L.R.4th 12.

Class actions in state mass tort suits. 53 A.L.R.4th 1220.

Implied warranty coverage for service transactions under state consumer protection and deceptive trade statutes. 72 A.L.R.4th 282.

Right to private action under state consumer protection act — Equitable relief available. 115 A.L.R.5th 709.

Right to private action under state consumer protection act — Preconditions to action. 117 A.L.R.5th 155.

Modern status of pendent federal jurisdiction, under 28 USCS § 1338(b), over state claim of unfair competition when joined with related claim under federal copyright laws. 58 A.L.R. Fed. 875.

Propriety, under Rule 23 of the Federal Rules of Civil Procedure, of class action for violation of Truth in Lending Act (15 USCS § 1601 et seq). 61 A.L.R. Fed. 603.

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 297 et seq.

54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 1029 et seq.

19 Am. Jur. Pl & Pr Forms (Rev), Parties, Form 43.1 (motion—to dismiss action as class action); Form 48.2 (order—provision—striking of class action allegations and requirement that plaintiffs elect whether to proceed individually).

47 Am. Jur. Proof of Facts 2d 227, Manufacturer's Failure to Warn Consumer of Allergenic Nature of Product.

§ 75-24-17. Proceedings to compel filing of statements or reports or obedience of subpoena, investigative demand, or court order; use of court-ordered testimony.

If any person knowingly and willfully fails or refuses to file any statement or report, or fails or refuses to obey any subpoena or investigative demand issued by the Attorney General, the Attorney General may, after notice, apply to the chancery or county court of the county in which such person resides or has his principal place of business, or if the person be absent or a nonresident of the State of Mississippi, of such court of the county in which the state capitol is located, and, after hearing thereon, request an order:

(a) Granting injunctive relief to restrain the person from engaging in any unfair or deceptive trade practice in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(b) Vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly prohibited practice;

(c) Granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand;

(d) The Attorney General may request that an individual who refuses to comply with a subpoena on the ground that testimony or matter may incriminate him be ordered by the court to provide the testimony or matter. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter directly related to a violation of the Mississippi Consumer Protection Act after asserting a privilege against self-incrimination to which he is entitled by law shall not have the testimony or matter so provided, or evidence derived therefrom, received against him in any criminal investigation or proceeding.

Any disobedience of any final order entered under this section by any said court shall be punished as a contempt thereof.

SOURCES: Laws, 1974, ch. 555, § 9; Laws, 1994, ch. 537, § 6, eff from and after passage (approved March 29, 1994).

Cross References — Power of chancery court to punish for contempt, see §§ 9-1-17, 9-5-85.

Applicability of the rights and remedies provided for by this chapter to violations of the Motor Vehicle Warranty Enforcement Act (§ 63-17-151 et seq.), see § 63-17-165.

RESEARCH REFERENCES

Law Reviews. Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 75-24-19. Civil penalties; imposition and recovery.

(1) Civil remedies.

(a) Any person who violated the terms of an injunction issued under Section 75-24-9 shall forfeit and pay to the state a civil penalty in a sum not to exceed Ten Thousand Dollars ($10,000.00) per violation which shall be payable to the General Fund of the State of Mississippi. For the purposes of this section, the chancery or county court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the state may petition for recovery of civil penalties.

(b) In any action brought under Section 75-24-9, if the court finds from clear and convincing evidence, that a person knowingly and willfully used any unfair or deceptive trade practice, method or act prohibited by Section 75-24-5, the Attorney General, upon petition to the court, may recover on behalf of the state a civil penalty in a sum not to exceed Ten Thousand Dollars ($10,000.00) per violation. One-half (½) of said penalty shall be payable to the Office of Consumer Protection to be deposited into the Attorney General's special fund. All monies collected under this section shall be used by the Attorney General for consumer fraud education and investigative and enforcement operations of the Office of Consumer Protection. The other one-half (½) shall be payable to the General Fund of the State of Mississippi. The Attorney General may also recover, in addition to any other relief that may be provided in this section, investigative costs and a reasonable attorney's fee.

(2) No penalty authorized by this section shall be deemed to limit the court's powers to insure compliance with its orders, decrees and judgments, or punish for the violations thereof.

(3) For purposes of this section, a knowing and willful violation occurs when the court finds from clear and convincing evidence that the party committing the violation knew or should have known that his conduct was a violation of Section 75-24-5.

SOURCES: Laws, 1974, ch. 555, § 10; Laws, 1994, ch. 537, § 7, eff from and after passage (approved March 29, 1994).

Cross References — Applicability of the rights and remedies provided for by this chapter to violations of the Motor Vehicle Warranty Enforcement Act (§ 63-17-151 et seq.), see § 63-17-165.

JUDICIAL DECISIONS

1. Attorneys' fees denied.
2. Number of violations properly determined.

1. Attorneys' fees denied.

When a pharmaceutical provider violated the Mississippi Consumer Protection Act (CPA) by reporting false drug prices to a third party knowing the State of Mississippi would rely on that information to calculate Medicaid reimbursements to pharmacies for those drugs, the State was not entitled to an award of attorneys' fees because the State's recoveries of punitive damages and an award under the CPA did not mandate such an award. Sandoz, Inc. v. State (In re Miss. Medicaid Pharm. Average Wholesale Price Litig.), — So. 3d —, 2015 Miss. LEXIS 545 (Miss. Oct. 29, 2015).

2. Number of violations properly determined.

When a pharmaceutical provider violated the Mississippi Consumer Protection Act (CPA) by reporting false drug prices to a third party knowing the State of Mississippi would rely on that information to calculate Medicaid reimbursements to pharmacies for those drugs, the number of the provider's violations was properly calculated as the number of occasions the provider reported a false price, rather than the number of occasions Medicaid reimbursed a claim using a reported false price, because the focus was on the specific conduct of the person from whom a penalty was sought. Sandoz, Inc. v. State (In re Miss. Medicaid Pharm. Average Wholesale Price Litig.), — So. 3d —, 2015 Miss. LEXIS 545 (Miss. Oct. 29, 2015).

RESEARCH REFERENCES

ALR. Constitutional right to jury trial in cause of action under state unfair or deceptive trade practices law. 54 A.L.R.5th 631.

§ 75-24-20. Criminal penalties; effect of multiple convictions.

(a) Any person who, knowingly and willfully, violates any provision of Section 75-24-5, shall be guilty of a misdemeanor, and upon conviction shall be fined up to One Thousand Dollars ($1,000.00).

(b) Upon a second conviction of any person for a violation of any provision of Section 75-24-5, the offense being committed within a period of five (5) years, such person shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the county jail for up to one (1) year or fined up to One Thousand Dollars ($1,000.00) or both.

(c) Upon a third or subsequent conviction of any person for a violation of any provision of Section 75-24-5, the offense being committed within a period of five (5) years, such person shall be guilty of a felony, and upon conviction shall be punished by imprisonment of not less than one (1) year nor more than five (5) years or fined not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00) or both.

(d) Criminal convictions from other states for violations of substantially similar provisions to those prohibited by this chapter shall be counted for the purposes of determining if a violation of this section is a first, second or third or subsequent offense.

SOURCES: Laws, 1994, ch. 537, § 8, eff from and after passage (approved March 29, 1994).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-24-21. District and county attorneys to assist attorney general; educational programs.

It shall be the duty of the district and county attorneys to lend to the attorney general such assistance as the attorney general may request in the commencement and prosecution of actions pursuant to this chapter. The district attorney and county attorney shall, within their respective jurisdictions, have the same duty and responsibility under this chapter as that of the attorney general statewide in the enforcement thereof, and they shall prosecute actions hereunder in the same manner as provided for the attorney general. When any action is prosecuted by such district or county attorney alone or in concert, he or they shall make a full report thereon to the attorney general, including the final disposition of the matter.

When any action has been prosecuted by a district or county attorney, at the request of the attorney general, the attorney general is authorized to pay the actual cost and expense of such action after same has been submitted to and approved by the court in which the action was taken, subject always to the final approval of the attorney general.

The attorney general may establish programs for the education of the public with respect to this chapter.

SOURCES: Laws, 1974, ch. 555, § 11, eff from and after July 1, 1974.

Cross References — County attorneys, see § 19-23-1 et seq.

District attorneys, see § 25-31-1 et seq.

Applicability of the rights and remedies provided for by this chapter to violations of the Motor Vehicle Warranty Enforcement Act (§ 63-17-151 et seq.), see § 63-17-165.

JUDICIAL DECISIONS

1. In general.

Major construction defect insurance policy was not "goods" or "service" within meaning of state's Consumer Protection Act. Burley v. Homeowners Warranty Corp., 773 F. Supp. 844 (S.D. Miss. 1990), aff'd, 936 F.2d 569 (5th Cir. 1991).

§ 75-24-23. Remedies as additional to those otherwise available.

The remedies in this chapter are in addition to and not in derogation of remedies otherwise available under federal, state or local law to the attorney general, the district or county attorneys, or to persons injured by violations of this chapter.

SOURCES: Laws, 1974, ch. 555, § 12, eff from and after July 1, 1974.

Cross References — Applicability of the rights and remedies provided for by this chapter to violations of the Motor Vehicle Warranty Enforcement Act (§ 63-17-151 et seq.), see § 63-17-165.

§ 75-24-25. Restriction on prices charged for goods during state of emergency; definitions; penalties.

(1) For the purposes of this section, the following terms shall have the meanings herein ascribed:

(a) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity.

(b) "State of emergency" has the meaning ascribed in Section 33-15-5.

(c) "Local emergency" has the meaning ascribed in Section 33-15-5.

(d) "Emergency impact area" has the meaning ascribed in Section 33-15-5.

(e) "Value received" means the consideration or payment given for the purchase of goods and services.

(2) Whenever, under the Mississippi Emergency Management Law, Sections 33-15-1 through 33-15-49, a state of emergency or a local emergency is declared to exist in this state, then the value received for all goods and services sold within the designated emergency impact area shall not exceed the prices

ordinarily charged for comparable goods or services in the same market area at or immediately before the declaration of a state of emergency or local emergency. However, the value received may include: any expenses, the cost of the goods and services which are necessarily incurred in procuring such goods and services during a state of emergency or local emergency. The prices ordinarily charged for comparable goods or services in the same market area do not include temporarily discounted goods or services. The same market area does not necessarily mean a single provider of goods or services.

(3) Any person who knowingly and willfully violates subsection (2) of this section, when the total value received during a twenty-four-hour period is Five Hundred Dollars ($500.00) or more, shall be guilty of a felony and upon conviction shall be punished by confinement for a term of not less than one (1) year nor more than five (5) years or a fine of not more than Five Thousand Dollars ($5,000.00), or both.

(4) Any person who knowingly and willfully violates subsection (2) of this section, when the total value received during a twenty-four-hour period is less than Five Hundred Dollars ($500.00), shall be guilty of a misdemeanor and upon conviction shall be fined not more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for a term not to exceed six (6) months, or both.

(5) For the purpose of determining the punishment to be imposed under subsections (3) and (4) of this section, the value received during a twenty-four-hour period shall be aggregated.

(6) In addition to the criminal penalties prescribed in subsections (3) and (4), any knowing and willful violation of subsection (2) of this section shall be considered an unfair or deceptive trade practice subject to and governed by all the procedures and remedies available under the provisions of this chapter for enforcement of prohibited acts and practices contained therein.

SOURCES: Laws, 1986, ch. 418; Laws, 1994, ch. 537, § 9; Laws, 2003, ch. 473, § 2; Laws, 2006, ch. 433, § 1, eff from and after passage (approved Mar. 20, 2006.)

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Attorneys' fees incurred by automobile manufacturer in Mississippi in defending breach of warranty class action against it were recoverable upon manufacturer's successful defense of warranty action. Deadwyler v. Volkswagen of Am., Inc., 748 F. Supp. 1146 (W.D.N.C. 1990), aff'd, 966 F.2d 1443 (4th Cir. N.C. 1992), cert. denied, 506 U.S. 956, 113 S. Ct. 415, 121 L. Ed. 2d 339 (1992).

ATTORNEY GENERAL OPINIONS

The price-gouging prohibitions contained in Section 75-24-25 apply to residential leases of real property. Tollison, Nov. 21, 2005, A.G. Op. #05-0554.

RESEARCH REFERENCES

Am Jur. 67 Am. Jur. 2d, Sales §§ 124, 125.

§ 75-24-27. Additional powers of Attorney General to enforce chapter.

(1) To accomplish the objectives and to carry out the duties prescribed in this chapter, the Attorney General, or his designee, in addition to the powers conferred by this chapter, may:

(a) Issue subpoenas and subpoenas duces tecum;

(b) Issue cease and desist orders to persons suspected of violating any provisions of this chapter;

(c) Administer an oath or affirmation to any person;

(d) Conduct hearings in aid of any investigation or inquiry;

(e) Compel the production of books, papers, documents, and other evidence, and call upon other state agencies for information;

(f) Issue any necessary rules and regulations in order to carry out the provisions of this chapter; and

(g) Enter into an assurance of voluntary compliance or an assurance of voluntary discontinuance with any person for settlement purposes.

(2) Unless otherwise ordered by a court for good cause shown, no statement or documentary material produced pursuant to subpoena under this section shall be produced for inspection or copying by, nor shall the contents thereof be disclosed to any person other than the authorized employees of the Attorney General without the consent of the person who produced the material.

(3) The Attorney General may use the documentary material or copies thereof in the enforcement of this chapter by presentation before any court, provided that any such material which contains trade secrets or proprietary information shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing such material. However, when material containing trade secrets or proprietary information is presented with court approval, the material and the evidence pertaining thereto shall be held in camera and shall not be part of the court record or trial transcript.

SOURCES: Laws, 1994, ch. 537, § 10, eff from and after passage (approved March 29, 1994).

§ 75-24-29. Persons conducting business in Mississippi required to provide notice of a breach of security involving personal information to all affected individuals; enforcement.

(1) This section applies to any person who conducts business in this state and who, in the ordinary course of the person's business functions, owns, licenses or maintains personal information of any resident of this state.

(2) For purposes of this section, the following terms shall have the meanings ascribed unless the context clearly requires otherwise:

(a) "Breach of security" means unauthorized acquisition of electronic files, media, databases or computerized data containing personal information of any resident of this state when access to the personal information has not been secured by encryption or by any other method or technology that renders the personal information unreadable or unusable;

(b) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements:

(i) Social security number;

(ii) Driver's license number or state identification card number; or

(iii) An account number or credit or debit card number in combination with any required security code, access code or password that would permit access to an individual's financial account; "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state or local government records or widely distributed media;

(iv) "Affected individual" means any individual who is a resident of this state whose personal information was, or is reasonably believed to have been, intentionally acquired by an unauthorized person through a breach of security.

(3) A person who conducts business in this state shall disclose any breach of security to all affected individuals. The disclosure shall be made without unreasonable delay, subject to the provisions of subsections (4) and (5) of this section and the completion of an investigation by the person to determine the nature and scope of the incident, to identify the affected individuals, or to restore the reasonable integrity of the data system. Notification shall not be required if, after an appropriate investigation, the person reasonably determines that the breach will not likely result in harm to the affected individuals.

(4) Any person who conducts business in this state that maintains computerized data which includes personal information that the person does not own or license shall notify the owner or licensee of the information of any breach of the security of the data as soon as practicable following its discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person for fraudulent purposes.

(5) Any notification required by this section shall be delayed for a reasonable period of time if a law enforcement agency determines that the

notification will impede a criminal investigation or national security and the law enforcement agency has made a request that the notification be delayed. Any such delayed notification shall be made after the law enforcement agency determines that notification will not compromise the criminal investigation or national security and so notifies the person of that determination.

(6) Any notice required by the provisions of this section may be provided by one (1) of the following methods: (a) written notice; (b) telephone notice; (c) electronic notice, if the person's primary means of communication with the affected individuals is by electronic means or if the notice is consistent with the provisions regarding electronic records and signatures set forth in 15 USCS 7001; or (d) substitute notice, provided the person demonstrates that the cost of providing notice in accordance with paragraph (a), (b) or (c) of this subsection would exceed Five Thousand Dollars ($5,000.00), that the affected class of subject persons to be notified exceeds five thousand (5,000) individuals or the person does not have sufficient contact information. Substitute notice shall consist of the following: electronic mail notice when the person has an electronic mail address for the affected individuals; conspicuous posting of the notice on the Web site of the person if the person maintains one; and notification to major statewide media, including newspapers, radio and television.

(7) Any person who conducts business in this state that maintains its own security breach procedures as part of an information security policy for the treatment of personal information, and otherwise complies with the timing requirements of this section, shall be deemed to be in compliance with the security breach notification requirements of this section if the person notifies affected individuals in accordance with the person's policies in the event of a breach of security. Any person that maintains such a security breach procedure pursuant to the rules, regulations, procedures or guidelines established by the primary or federal functional regulator, as defined in 15 USCS 6809(2), shall be deemed to be in compliance with the security breach notification requirements of this section, provided the person notifies affected individuals in accordance with the policies or the rules, regulations, procedures or guidelines established by the primary or federal functional regulator in the event of a breach of security of the system.

(8) Failure to comply with the requirements of this section shall constitute an unfair trade practice and shall be enforced by the Attorney General; however, nothing in this section may be construed to create a private right of action.

SOURCES: Laws, 2010, ch. 489, § 1, eff from and after July 1, 2011.

PYRAMID SALES SCHEMES; CANCELLATION OF FRANCHISES

SEC.
75-24-51. Definitions.
75-24-53. Sales of participation in pyramid sales scheme forbidden; franchises to be terminated only on ninety days' notice.

75-24-55. Statements by franchisors as to past or potential earnings.
75-24-57. Sales contract for pyramid sales scheme void; actions for damages.
75-24-59. Injunctive relief.
75-24-61. Penalties.
75-24-63. Provisions not applicable to retailers covered under Inventory Repurchase Law.

§ 75-24-51. Definitions.

As used in Sections 75-24-51 through 75-24-61:

(1) The term "sale or distribution" includes the acts of leasing, renting or consigning;

(2) The term "goods" includes any personal property, real property, or any combination thereof;

(3) The term "other property" includes a franchise, license distributorship or other similar right, privilege, or interest;

(4) The term "person" includes an individual, corporation, trust, estate, partnership, unincorporated association, or any other legal or commercial entity;

(5) The term "pyramid sales scheme" includes any plan or operation for the sale or distribution of goods, services, or other property wherein a person for a consideration acquires the opportunity to receive a pecuniary benefit, which is not primarily contingent on the volume or quantity of goods, services, or other property sold or distributed to be sold or distributed to persons for purposes of resale to consumers, and is based upon the inducement of additional persons, by himself or others, regardless of number, to participate in the same plan or operation;

(6) "Franchise" means a written arrangement for a definite or indefinite period, in which a person for a consideration grants to another person a license to use a trade name, trademark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement or otherwise; except that, the term "franchise" shall not apply to persons engaged in sales from warehouses or like places of storage, leased departments of retail stores, or places of original manufacture; and

(7) "Consideration" as used in Sections 75-24-51 through 75-24-61 does not include payment for sales demonstration equipment and materials furnished at cost for use in making sales and not for resale or payments amounting to less than one hundred dollars ($100.00) when computed on an annual basis.

SOURCES: Laws, 1975, ch. 362, § 1, eff from and after July 1, 1975.

RESEARCH REFERENCES

ALR. Fraud in connection with franchise or distributorship relationship. 64 A.L.R.3d 6.

§ 75-24-53. Sales of participation in pyramid sales scheme forbidden; franchises to be terminated only on ninety days' notice.

No person shall, directly or through the use of agents or intermediaries, in connection with the sale, distribution, or lease of goods, services, or other property, sell, offer or attempt to sell a participation or the right to participate in a pyramid sales scheme. No person who has granted a franchise to another person shall cancel or otherwise terminate any such franchise agreement without notifying such person of the cancellation, termination or failure to renew in writing at least ninety (90) days in advance of the cancellation, termination or failure to renew, except that when criminal misconduct, fraud, abandonment, bankruptcy or insolvency of the franchisee, or the giving of a no account or insufficient funds check is the basis or grounds for cancellation or termination, the ninety-day notice shall not be required.

SOURCES: Laws, 1975, ch. 362, § 2, eff from and after July 1, 1975.

Cross References — Sales contract for pyramid sales scheme made in violation of this section void, see § 75-24-57.

Person inducing or causing another to participate in pyramid scheme subject to remedy and proceedings authorized in § 75-24-15, see § 75-24-57.

Penalties for violating provisions of this section, see § 75-24-61.

JUDICIAL DECISIONS

1. In general.

Franchisee of do-it-yourself moving company had actual notice in writing of termination of franchise agreement well in advance of 90 days required by § 75-24-53, where (1) moving center agreement provided that it would terminate automatically and simultaneously with lease agreement, which was to terminate on specified date unless renewed, (2) on day after foregoing date, franchisor wrote letter to franchisee explaining that lease had expired as of foregoing termination date and returned check that had been tendered after such date, and (3) franchisee was not actually required to vacate premises until approximately 6 months later and in fact continued to operate as dealer until third day of seventh month. Walker v. U-Haul Co., 734 F.2d 1068 (5th Cir. 1984), on reh'g, 747 F.2d 1011 (5th Cir. 1984).

RESEARCH REFERENCES

ALR. Validity of pyramid distribution plan. 54 A.L.R.3d 217.

Damages for wrongful termination of automobile dealership contracts. 54 A.L.R.3d 324.

Existence of fiduciary duty between franchisor and franchisee. 52 A.L.R.5th 613.

Am Jur. 62B Am. Jur. 2d, Private Franchise Contracts §§ 7-9.

20 Am. Jur. Pl & Pr Forms (Rev), Private Franchise Contracts, Forms 31 et seq. (termination of franchise).

21 Am. Jur. Trials 453, Franchise Litigation.

§ 75-24-55. Statements by franchisors as to past or potential earnings.

Franchise companies shall not represent directly or by implication that prospective participants may or will earn any stated gross or net amount, or represent in any manner, the past earnings of participants unless in fact the past earnings or predicted gross or net amount represented are those of a substantial number of participants in the community or geographical area in which the representations are made and accurately reflect the average earnings of those participants under circumstances similar to those of the participant or prospective participant to whom the representation is made.

SOURCES: Laws, 1975, ch. 362, § 3, eff from and after July 1, 1975.

§ 75-24-57. Sales contract for pyramid sales scheme void; actions for damages.

Any sales contract for a pyramid sales scheme made in violation of Section 75-24-53 is void and any person who, directly or through the use of agents or intermediaries, induces or causes another person to participate in a pyramid sales scheme will be subject to the remedy and proceedings authorized in Section 75-24-15.

A franchisee suffering damage as a result of the failure to give notice as required of the cancellation or termination of a franchise, may institute legal proceedings under the provisions of Sections 75-24-51 through 75-24-61 against the franchisor who canceled or terminated his franchise in the county in which the franchisor or his agent resides or can be located or where the franchisee resides. When the franchisee prevails in any such action he may be awarded a recovery of damages sustained to include loss of goodwill, costs of the suit, and any equitable relief that the court deems proper.

SOURCES: Laws, 1975, ch. 362, § 4, eff from and after July 1, 1975.

RESEARCH REFERENCES

ALR. Validity of pyramid distribution plan. 54 A.L.R.3d 217.

Damages for wrongful termination of automobile dealership contracts. 54 A.L.R.3d 324.

Fraud in connection with franchise or distributorship relationship. 64 A.L.R.3d 6.

Vicarious liability of private franchisor. 81 A.L.R.3d 764.

Existence of fiduciary duty between franchisor and franchisee. 52 A.L.R.5th 613.

Am Jur. 62B Am. Jur. 2d, Private Franchise Contracts §§ 7-9.

21 Am. Jur. Trials 453, Franchise Litigation.

§ 75-24-59. Injunctive relief.

In addition to other penalties and remedies provided in Sections 75-24-51 through 75-24-61, whenever it appears that any person is engaged or is about to engage in any act or practice which constitutes a pyramid sales scheme or which is prohibited by Sections 75-24-51 through 75-24-61, the attorney general may bring an action in the name of the state pursuant to the provisions of Section 75-24-9 in order to enjoin any such act or practice.

SOURCES: Laws, 1975, ch. 362, § 5, eff from and after July 1, 1975.

§ 75-24-61. Penalties.

Any person willfully violating any of the provisions of Section 75-24-53 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the county jail for a term not to exceed six (6) months or by both such fine and imprisonment.

SOURCES: Laws, 1975, ch. 362, § 6, eff from and after July 1, 1975.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-24-63. Provisions not applicable to retailers covered under Inventory Repurchase Law.

Sections 75-24-51 through 75-24-61, Mississippi Code of 1972, shall not apply to retailers as defined in Section 75-77-1, Mississippi Code of 1972.

SOURCES: Laws, 1997, ch. 318, § 14, eff from and after July 1, 1997.

SERVICE CONTRACTS

SEC.
75-24-91. Service contract defined; service contract not a contract for insurance and exempt from provisions of Title 83; service contract subject to Mississippi Consumer Protection Act.

§ 75-24-91. Service contract defined; service contract not a contract for insurance and exempt from provisions of Title 83; service contract subject to Mississippi Consumer Protection Act.

(1) The term "service contract," "home warranty" or "home service contract," as used in this section, means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement or maintenance of property or to reimburse, in whole or in part, the owner of such property for the repair, replacement or maintenance of property if the operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear. A service contract may contain a provision for incidental payment under such contract where service, repair or replacement is not feasible or economical.

(2) The marketing, sale, offering for sale, issuance, making, proposing to make and administration of a service contract is not a contract of insurance

under Mississippi law and is exempt from the provisions of Title 83, Mississippi Code of 1972.

(3) Service contracts shall be subject to the provisions of the Mississippi Consumer Protection Act, Section 75-24-1 et seq.

(4) Nothing contained herein shall repeal or alter the regulation of vehicle service contracts currently defined and regulated under Section 83-65-101 et seq.

SOURCES: Laws, 2003, ch. 386, § 1, eff from and after passage (approved Mar. 14, 2003.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the first sentence of subsection (1) by substituting "The term" for "The terms" and "if the operational" for "if so operational." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — Laws of 2003, ch. 386, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after its passage, and shall be applicable to all proceedings pending before the Department of Insurance or the courts of this state on the effective date of this act." Laws of 2003, ch. 386, became effective upon the signature of the Governor on March 14, 2003.

Prior to the enactment of this section by Laws of 2003, ch. 386, § 1, former §§ 83-57-1 through 83-57-79 provided for the regulation of home warranties by the Commissioner of Insurance.

PROMOTIONAL DEVICES FOR INTERESTS IN REAL PROPERTY

SEC.
75-24-101. Promotional devices for interests in real property; disclosure requirements; penalties.

§ 75-24-101. Promotional devices for interests in real property; disclosure requirements; penalties.

(1) No sweepstakes, lodging, certificate, gift, award, premium, discount, drawing, prize or display may be utilized as a promotional device for any interest in real property by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right-to-use agreement, or by any other means, without a disclosure:

(a) That the promotional device is being used for the purposes of soliciting sales of interests in real property;

(b) That the promotional device is being used to obtain the names and addresses of prospective purchasers and that any names and addresses acquired may be used for the purpose of soliciting sales of interests in real property;

(c) Of the name and address of each time-sharing plan or business entity participating in the program;

(d) Of the day and year when all prizes are to be awarded;

(e) Of the method by which all prizes are to be awarded; and

(f) Of the approximate value of each prize or gift that is to be awarded.

(2) Any person, corporation or association that knowingly and willfully violates the provisions of subsection (1) of this section shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not exceeding One Thousand Dollars ($1,000.00) per violation.

(3) Any violation of subsection (1) of this section shall be considered an unfair or deceptive act in the conduct of trade or commerce and shall be subject to the rights and remedies as provided for by Chapter 24, Title 75, Mississippi Code of 1972.

SOURCES: Laws, 1987, ch. 444, eff from and after July 1, 1987.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Provision of this section prohibiting use of certain promotional devices for purpose of soliciting sales of interest in real property without disclosing specified information, was not applicable to major construction defect insurance policy issued pursuant to builder's association's homeowner's warranty program, where protection provided by program did not resemble even remotely any of promotional devices restricted by statute from being used. Burley v. Homeowners Warranty Corp., 773 F. Supp. 844 (S.D. Miss. 1990), aff'd, 936 F.2d 569 (5th Cir. 1991).

CANCELLATION OF MAGAZINE SUBSCRIPTIONS EXECUTED BY TELEPHONE SOLICITATION

SEC.
75-24-131. Procedure for cancellation of magazine subscriptions executed by telephone solicitation; refunds; penalty.

§ 75-24-131. Procedure for cancellation of magazine subscriptions executed by telephone solicitation; refunds; penalty.

(1) Any subscription agreement for the purchase of magazines or other periodicals which is made in a telephone solicitation initiated by the seller, or by a person acting on behalf of the seller, and agreed to by the purchaser at his home is subject to cancellation by the purchaser as provided in this section.

(2) In addition to any other right to cancel a subscription (made as described in subsection (1) of this section) which the purchaser may have under the subscription agreement, he has the right to cancel the subscription within six (6) months after the date the first invoice for the cost of the subscription is received. Cancellation occurs when the purchaser gives written notice of cancellation to the seller at the seller's address, or at the address of the subscription department printed in the magazine or periodical or, if no such department is listed, at the general business address of the publication. Notice of cancellation may be given by certified or regular mail, and it is effective on

the date it is received by the seller or publisher. Notice of cancellation given by the purchaser need not take a particular form and is sufficient if it indicates by any form of written expression that the purchaser wishes to terminate his subscription.

(3) Within sixty (60) days after notice of cancellation, the seller shall refund to the purchaser any amount which has been paid for the subscription less the amount owed by the purchaser for any magazines or periodicals, and postage thereon, received by the purchaser prior to the notice of cancellation.

SOURCES: Laws, 1989, ch. 574, § 1, eff from and after July 1, 1989.

MISSISSIPPI RENTAL-PURCHASE AGREEMENT ACT

Sec.

75-24-151. Short title.
75-24-153. Definitions.
75-24-155. Applicability of other laws; inapplicability to particular leases.
75-24-157. Duties of lessors as to disclosure of information generally.
75-24-159. Items to be disclosed in rental-purchase agreements.
75-24-161. Provisions not permitted in rental-purchase agreements.
75-24-163. Reinstatement of rental agreements after failure to make timely payment; repossession of property during reinstatement period.
75-24-165. Written receipts for payments.
75-24-167. Renegotiation of rental-purchase agreements.
75-24-169. Advertisement of rental-purchase agreements.
75-24-171. Liability of lessors for violations generally; availability of offsets; nature of remedies; limitation period.
75-24-173. Liability of lessors for unintentional violations or bona fide errors; effect of notification and adjustment of errors by lessors.
75-24-175. Signature of provisions of agreements by lessees.

§ 75-24-151. Short title.

Sections 75-24-151 through 75-24-175 shall be known and may be cited as the Mississippi Rental-Purchase Agreement Act.

SOURCES: Laws, 1995, ch. 485, § 1, eff from and after July 1, 1995.

§ 75-24-153. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Advertisement" means a commercial message in any medium that aids, promotes or assists, directly or indirectly, a rental-purchase agreement.

(b) "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the rental-purchase agreement.

(c) "Consumer" means a natural person who rents personal property under a rental-purchase agreement to be used primarily for personal, family or household purposes.

(d) "Consummation" means the time a consumer becomes contractually obligated on a rental-purchase agreement.

(e) "Lessor" means a person who regularly provides the use of property through rental-purchase agreements and to whom periodic rental payments are initially payable on the face of the rental-purchase agreement.

(f) "Rental-Purchase Agreement" means an agreement for the use of personal property by a natural person primarily for personal, family or household purposes, for an initial period of four (4) months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue renting or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

SOURCES: Laws, 1995, ch. 485, § 2, eff from and after July 1, 1995.

§ 75-24-155. Applicability of other laws; inapplicability to particular leases.

(1) Rental-purchase agreements as defined in Sections 75-24-151 through 75-24-175 are not governed by the laws relating to:

(a) A consumer credit sale as defined in Section 75-66-1(2);

(b) Loans, interest, finance charges, credit or installment sales as those terms are used in Mississippi statutes;

(c) A security interest as defined in Section 75-1-201 of the Uniform Commercial Code.

(2) Sections 75-24-151 through 75-24-175 do not apply to the following:

(a) Rental-purchase agreements primarily for business, commercial or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;

(b) A lease of a safe deposit box;

(c) A lease or bailment of personal property which is incidental to the lease of real property and which provides that the consumer has no option to purchase the leased property; or

(d) A lease of an automobile.

SOURCES: Laws, 1995, ch. 485, § 3, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 1 et seq.

CJS. 21 C.J.S., Credit Reporting Agencies; Consumer Protection § 32 et seq.

§ 75-24-157. Duties of lessors as to disclosure of information generally.

(1) The lessor shall disclose to the consumer the information required by Sections 75-24-151 through 75-24-175. In a transaction involving more than

one lessor, only one (1) lessor need make the disclosures, but all lessors shall be bound by such disclosures.

(2) The disclosures shall be made at or before consummation of the rental-purchase agreement.

(3) The disclosures shall be made clearly and conspicuously in writing and a copy of the rental-purchase agreement provided to the consumer. The disclosures required under Section 75-24-159 shall be made on the face of the contract above the line for the consumer's signature.

(4) If a disclosure becomes inaccurate as the result of any act, occurrence or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of Sections 75-24-151 through 75-24-175.

SOURCES: Laws, 1995, ch. 485, § 4, eff from and after July 1, 1995.

Cross References — Consummation defined, see § 75-24-153.
Items to be disclosed in rental-purchase agreements, see § 75-24-159.
Provisions not permitted in rental-purchase agreements, see § 75-24-161.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 1 et seq.

CJS. 21 C.J.S., Credit Reporting Agencies; Consumer Protection § 50.

§ 75-24-159. Items to be disclosed in rental-purchase agreements.

For each rental-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(a) Whether the periodic payment is weekly, monthly or otherwise, the dollar amount of each payment, and the total number and dollar amount of all periodic payments necessary to acquire ownership of the property;

(b) A statement that the consumer will not own the property until the consumer has paid the total amount necessary to acquire ownership;

(c) A statement advising the consumer whether the consumer is liable for loss or damage to the property, and, if so, a statement that such liability will not exceed the fair market value of the property as of the time it is lost or damaged;

(d) A brief description of the rental property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of Sections 75-24-151 through 75-24-175;

(e) A statement of the cash price of the property. Where the agreement involves a rental of two (2) or more items as a set, in one (1) agreement, a statement of the aggregate cash price of all items shall satisfy this requirement;

(f) The total of initial payments paid or required at or before consummation of the agreement or delivery of the property, whichever is later;

(g) A statement that the total of payments does not include other charges, such as delivery, in-home collection, pickup and reinstatement fees, which fees shall be separately disclosed in the contract;

(h) A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option and the price, formula or method for determining the price at which the property may be so purchased;

(i) A statement identifying the party responsible for maintaining or servicing the property while it is being rented, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the rental property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(j) The date of the transaction and the identities of the lessor and consumer;

(k) A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any rental term along with any past due rental payments; and

(*l*) Notice of the right to reinstate an agreement as herein provided.

SOURCES: Laws, 1995, ch. 485, § 5, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 1 et seq.

CJS. 21 C.J.S., Credit Reporting Agencies; Consumer Protection § 47-57.

§ 75-24-161. Provisions not permitted in rental-purchase agreements.

A rental-purchase agreement may not contain:

(a) A confession of judgment;

(b) A negotiable instrument;

(c) A security interest or any other claim of a property interest in any property except that property delivered by the lessor pursuant to the rental-purchase agreement;

(d) A wage assignment;

(e) A waiver by the consumer of claims or defenses;

(f) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises without permission or to commit any breach of the peace in the repossession of property;

(g) A provision for a late charge or any other type of charge or penalty for reinstating a rental-purchase agreement in addition to a reinstatement fee; however, a lessor may use the term "late charge" or a similar term to refer to a reinstatement fee; or

(h) A provision for more than one (1) reinstatement fee on any one (1) periodic payment regardless of the period of time for which it remains unpaid.

SOURCES: Laws, 1995, ch. 485, § 6, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 1 et seq.

CJS. 21 C.J.S., Credit Reporting Agencies; Consumer Protection § 47-57.

§ 75-24-163. Reinstatement of rental agreements after failure to make timely payment; repossession of property during reinstatement period.

(1) A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of the following charges within five (5) days of the renewal date of an agreement with monthly periodic payments or within two (2) days of the renewal date of an agreement with periodic payments more frequently than monthly:

(a) All past due rental charges;

(b) If the goods have been picked up, the reasonable costs of pickup and redelivery; and

(c) Any applicable reinstatement fee.

(2) In the case of a consumer who has paid less than two-thirds (⅔) of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the goods within the applicable reinstatement period, other than through judicial process, the consumer may reinstate the agreement during a period of not less than twenty-one (21) days after the date of the return of the property.

(3) In the case of a consumer who has paid two-thirds (⅔) or more of the total of payments necessary to acquire ownership, and where the consumer has returned or voluntarily surrendered the goods within the applicable reinstatement period, other than through judicial process, the consumer may reinstate the agreement during a period of not less than forty-five (45) days after the date of the return of the property.

(4) Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property, if available, or with substitute property of comparable quality and condition.

SOURCES: Laws, 1995, ch. 485, § 7, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 1 et seq.

CJS. 21 C.J.S., Credit Reporting Agencies; Consumer Protection § 47-57.

§ 75-24-165. Written receipts for payments.

A lessor shall provide the consumer a written receipt for any payment made.

SOURCES: Laws, 1995, ch. 485, § 8, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 1 et seq.

CJS. 21 C.J.S., Credit Reporting Agencies; Consumer Protection § 32 et seq.

§ 75-24-167. Renegotiation of rental-purchase agreements.

(1) A renegotiation occurs when any term of rental-purchase agreement that is required to be disclosed by Section 75-24-159 is changed by agreement between the lessor and consumer. A renegotiation is considered to be a new rental-purchase agreement requiring the lessor to give all the disclosures required by Section 75-24-159.

(2) A renegotiation shall not include any of the following:

(a) Reinstatement of a rental-purchase agreement in accordance with Section 75-24-163;

(b) A lessor's waiver or failure to assert any claim against the consumer;

(c) A deferral, extension or waiver of a portion of a periodic payment or of one or more periodic payments; or

(d) A change, made at the consumer's request, of the date of the week or month on which periodic payments are to be made.

SOURCES: Laws, 1995, ch. 485, § 9, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 1 et seq.

CJS. 21 C.J.S., Credit Reporting Agencies; Consumer Protection § 32 et seq.

§ 75-24-169. Advertisement of rental-purchase agreements.

(1) If an advertisement for a rental-purchase agreement refers to or states the dollar amount of the periodic payment for a specific item and refers to or states that the consumer has the right to acquire ownership of that item, the advertisement shall also clearly and conspicuously state the following, as applicable:

(a) That the transaction advertised is a rental-purchase agreement;

(b) The total number of payments necessary to acquire ownership of the item; and

(c) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

(2) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(3) The provisions of subsection (1) of this section shall not apply to an advertisement which does not refer to or state the amount of any payment or which is published in the yellow pages of a telephone directory or in any similar directory of business.

SOURCES: Laws, 1995, ch. 485, § 10, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 1 et seq.

CJS. 21 C.J.S., Credit Reporting Agencies; Consumer Protection § 32 et seq.

§ 75-24-171. Liability of lessors for violations generally; availability of offsets; nature of remedies; limitation period.

(1) A lessor who fails to comply with the requirements of Sections 75-24-151 through 75-24-175 is liable to the consumer damaged thereby in an amount equal to the greater of:

(a) The actual damages sustained by the consumer as a result of the lessor's failure to comply with Sections 75-24-151 through 75-24-175;

(b) Twenty-five percent (25%) of the total of payments necessary to acquire ownership, but not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00); or

(c) Such lessor is also liable to the consumer for the costs of the action and reasonable attorney's fees as determined by the court.

(2) A consumer may not take any action to offset the amount for which a lessor is potentially liable under subsection (1) of this section against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection does not bar a consumer then in default on an obligation from asserting a violation of Sections 75-24-151 through 75-24-175 as an original action, or as a defense or counterclaim, to an action brought by a lessor against the consumer.

(3) The provisions of Sections 75-24-151 through 75-24-175 are cumulative with any other rights or remedies available in this state.

(4) No action under this section may be brought in any court of competent jurisdiction more than one (1) year after the date the consumer made his last rental payment or more than one (1) year after the date of the occurrence of the violation that is the subject of the suit, whichever is later.

SOURCES: Laws, 1995, ch. 485, § 11, eff from and after July 1, 1995.

Cross References — No penalty as specified in this section for a violation of §§ 75-24-151 through 75-24-175 determined to be unintentional or the result of a bona fide error, see § 75-24-173.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 1 et seq.

CJS. 21 C.J.S., Credit Reporting Agencies; Consumer Protection § 32 et seq.

§ 75-24-173. Liability of lessors for unintentional violations or bona fide errors; effect of notification and adjustment of errors by lessors.

(1) If a lessor establishes by a preponderance of evidence that a violation of Sections 75-24-151 through 75-24-175 was unintentional or the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, no penalty as specified in Section 75-24-171 may be imposed and validity of the transaction is not affected. Examples of bona fide errors are clerical errors, calculation errors, errors due to unintentionally improper computer programming or data entry and printing errors but do not include an error of legal judgment with respect to a lessor's obligations under Sections 75-24-151 through 75-24-175.

(2) A lessor has no liability under this section for any failure to comply with any requirement imposed under Sections 75-24-151 through 75-24-175 if within sixty (60) days after discovering an error, and prior to the institution of an action under Sections 75-24-151 through 75-24-175 or the receipt of written notice of the error from the consumer, the lessor notifies the consumer of the error and makes whatever adjustments in the appropriate account as are necessary to correct the error.

SOURCES: Laws, 1995, ch. 485, § 12, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 1 et seq.

CJS. 21 C.J.S., Credit Reporting Agencies; Consumer Protection § 32 et seq.

§ 75-24-175. Signature of provisions of agreements by lessees.

Each provision of a contract under Sections 75-24-151 through 75-24-175 shall contain a provision to be signed or initialed by the lessee.

SOURCES: Laws, 1995, ch. 485, § 13, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 1 et seq.

CJS. 21 C.J.S., Credit Reporting Agencies; Consumer Protection § 32 et seq.

SALE OF RENOVATED VEHICLE AFTER SUBMERSION

SEC.
75-24-191. Automobile dealer to provide purchaser with notice that renovated vehicle had been previously submerged; penalty.

§ 75-24-191. Automobile dealer to provide purchaser with notice that renovated vehicle had been previously submerged; penalty.

Any automobile dealer or salesman who sells a renovated vehicle after it has been submerged without notifying the purchaser in writing, when the dealer or salesman knew or should have known of the submersion, shall be subject to a fine not to exceed the sales price of the vehicle.

SOURCES: Laws, 2006, ch. 466, § 3, eff from and after July 1, 2006.

OBLIGATIONS OF CONSUMER REPORTING AGENCIES

SEC.
75-24-201. Security freeze; written request by consumer; fee; disclosure of security freeze process; timing; unique personal identification number to be used by consumer to authorize removal or lifting of freeze.
75-24-203. Consumer to be notified of change to certain information in consumer's file; timing.
75-24-205. Notice to person requesting consumer report of security freeze on consumer file.
75-24-207. Removal or temporary lifting of security freeze; timing.
75-24-209. Inapplicability of security freeze to certain consumer reports.
75-24-211. Certain entities not required to place security freeze on consumer file.
75-24-213. Honoring another agency's security freeze.
75-24-215. Treatment of application for credit or other use as incomplete under certain circumstances.
75-24-217. Definitions.

§ 75-24-201. Security freeze; written request by consumer; fee; disclosure of security freeze process; timing; unique personal identification number to be used by consumer to authorize removal or lifting of freeze.

(1) On written request sent by certified mail that includes proper identification provided by a consumer and a copy of a valid police report, investigative report or complaint which the consumer has filed with a law enforcement agency regarding the unlawful use of the personal information of the consumer by another person, a consumer reporting agency shall place a security freeze on a consumer's consumer file not later than the fifth business day after the date the agency receives the request. A reporting agency may charge a consumer a reasonable fee not to exceed Ten Dollars ($10.00) to place a security freeze in his file.

(2) On written request for a security freeze provided by a consumer under subsection (1), a consumer reporting agency shall disclose to the consumer the process of placing, removing and temporarily lifting a security freeze and the process for allowing access to information from the consumer's file with the consumer reporting agency for a specific requester or period while the security freeze is in effect.

(3) A consumer reporting agency shall, not later than the tenth business day after the date the agency receives the request for a security freeze:

(a) Send a written confirmation of the security freeze to the consumer; and

(b) Provide the consumer with a unique personal identification number or password to be used by the consumer to authorize a removal or temporary lifting of the security freeze under Section 75-24-207.

(4) A consumer may request in writing a replacement personal identification number or password. The request must comply with the requirements for requesting a security freeze under subsection (1). The consumer reporting agency shall, not later than the third business day after the date the agency receives the request for a replacement personal identification number or password, provide the consumer with a new unique personal identification number or password to be used by the consumer instead of the number or password that was provided under subsection (3).

(5) As used in Sections 75-24-201 through 75-24-217, the term "security freeze" means a notice that (a) prohibits a consumer reporting agency from releasing all or any part of a consumer report or any information derived from a consumer report relating to the extension of credit, and (b) is placed in the file retained by the consumer reporting agency on that consumer at the consumer's request pursuant to subsection (1).

SOURCES: Laws, 2007, ch. 585, § 1, eff from and after July 1, 2007.

§ 75-24-203. Consumer to be notified of change to certain information in consumer's file; timing.

If a security freeze is in place, a consumer reporting agency shall notify the consumer in writing of a change in the consumer's file retained by the consumer reporting agency to the consumer's name, date of birth, social security number, or address not later than thirty (30) calendar days after the date the change is made. The agency shall send notification of a change of address to both the new address and former address of the consumer. This section does not require notice of an immaterial change, including a street abbreviation change or correction of a transposition of letters or misspelling of a word.

SOURCES: Laws, 2007, ch. 585, § 2, eff from and after July 1, 2007.

§ 75-24-205. Notice to person requesting consumer report of security freeze on consumer file.

A consumer reporting agency shall notify a person who requests a consumer report if a security freeze is in effect for the consumer file involved in that report.

SOURCES: Laws, 2007, ch. 585, § 3, eff from and after July 1, 2007.

§ 75-24-207. Removal or temporary lifting of security freeze; timing.

(1) On a request in writing or by telephone and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under Section 75-24-201, a consumer reporting agency shall remove a security freeze within three (3) business days after the agency receives the request.

(2) On a request in writing or by telephone and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under Section 75-24-201, a consumer reporting agency shall, within three (3) business days after the agency receives the request, temporarily lift the security freeze for:

(a) A certain properly designated period; or

(b) A certain properly identified requester.

(3) A consumer reporting agency may develop procedures involving the use of a telephone, a facsimile machine, the Internet or another electronic medium to receive and process a request from a consumer under this section.

(4) A consumer reporting agency shall remove a security freeze placed on a consumer file if the security freeze was placed due to a material misrepresentation of fact by the consumer. The consumer reporting agency shall notify the consumer in writing before removing the security freeze under this subsection.

(5) A consumer reporting agency may not charge a fee for a request under subsection (1) or (2).

SOURCES: Laws, 2007, ch. 585, § 4, eff from and after July 1, 2007.

§ 75-24-209. Inapplicability of security freeze to certain consumer reports.

A security freeze does not apply to a consumer report provided to:

(a) A state or local governmental entity, including a law enforcement agency or court or private collection agency, if the entity, agency or court is acting under a court order, warrant, subpoena or administrative subpoena;

(b) An agency acting to investigate or collect child support payments or acting under Title IV-D of the Social Security Act (42 USCS Section 651 et seq.);

(c) The State Tax Commission acting to investigate or collect delinquent sales or franchise taxes;

(d) A tax assessor-collector acting to investigate or collect delinquent ad valorem taxes;

(e) A person for the purposes of prescreening as provided by the Fair Credit Reporting Act (15 USCS Section 1681 et seq.), as amended;

(f) A person who intends to use the information for employment purposes;

(g) A person who intends to use the information in connection with adjusting a claim, rating or underwriting of insurance involving the consumer;

(h) A person with whom the consumer has an account or contract or to whom the consumer has issued a negotiable instrument, or the person's subsidiary, affiliate, agent, assignee, prospective assignee or private collection agency, for purposes related to that account, contract or instrument;

(i) A subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom access has been granted under Section 75-24-207(2);

(j) A person who administers a credit file monitoring subscription service to which the consumer has subscribed;

(k) A person for the purpose of providing a consumer with a copy of the consumer's report on the consumer's request;

(*l*) A check service or fraud prevention service company that issues consumer reports:

(i) To prevent or investigate fraud; or

(ii) For purposes of approving or processing negotiable instruments, electronic funds transfers or similar methods of payment;

(m) A deposit account information service company that issues consumer reports related to account closures caused by fraud, substantial overdrafts, automated teller machine abuses or similar negative information regarding a consumer to an inquiring financial institution for use by the financial institution only in reviewing a consumer request for a deposit account with that institution; or

(n) A consumer reporting agency that:

(i) Acts only to resell credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies; and

(ii) Does not maintain a permanent database of credit information from which new consumer reports are produced.

SOURCES: Laws, 2007, ch. 585, § 5, eff from and after July 1, 2007.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 75-24-211. Certain entities not required to place security freeze on consumer file.

The requirement under Sections 75-24-201 through 75-24-217 to place a security freeze on a consumer file does not apply to:

(a) A check service or fraud prevention service company that issues consumer reports:

(i) To prevent or investigate fraud; or

(ii) For purposes of approving or processing negotiable instruments, electronic funds transfers or similar methods of payment; or

(b) A deposit account information service company that issues consumer reports related to account closures caused by fraud, substantial overdrafts, automated teller machine abuses or similar negative information regarding a consumer to an inquiring financial institution for use by the financial institution only in reviewing a consumer request for a deposit account with that institution.

SOURCES: Laws, 2007, ch. 585, § 6, eff from and after July 1, 2007.

§ 75-24-213. Honoring another agency's security freeze.

A consumer reporting agency shall honor a security freeze placed on a consumer file by another consumer reporting agency.

SOURCES: Laws, 2007, ch. 585, § 7, eff from and after July 1, 2007.

§ 75-24-215. Treatment of application for credit or other use as incomplete under certain circumstances.

If a third party requests access to a consumer report on which a security freeze applies, and this request is in connection with an application for credit, insurance or any other use, and the consumer does not immediately request the consumer reporting agency to lift the security freeze and allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the consumer's application as incomplete.

SOURCES: Laws, 2007, ch. 585, § 8, eff from and after July 1, 2007.

§ 75-24-217. Definitions.

The terms "consumer," "consumer report" and "consumer reporting agency" as used in Sections 75-24-201 through 75-24-217 shall have the same meanings as given to those respective terms in the Fair Credit Reporting Act (15 USCS Section 1681 et seq.), as amended.

SOURCES: Laws, 2007, ch. 585, § 9, eff from and after July 1, 2007.

CREDIT CARD PROCESSING HARDWARE AND SOFTWARE

Sec.
75-24-231. Credit card processing hardware and software required to meet requirements of federal law.

§ 75-24-231. Credit card processing hardware and software required to meet requirements of federal law.

(1) Beginning January 1, 2011, all business entities and their agents providing credit card processing hardware or software to retail merchants for the transaction of business shall provide such hardware or software that meets the requirements of the Fair and Accurate Credit Transactions Act of 2003 and does not print on a receipt provided to the cardholder: (a) more than the last five (5) digits of the credit card or debit card account number, or (b) the expiration date of the credit card or debit card.

(2) The provisions of subsection (1) of this section apply only to receipts that are electronically printed and do not apply to transactions in which the sole means of recording the cardholder's credit card or debit card account number is by handwriting or by an imprint or copy of the credit card or debit card.

(3) Any business entity providing credit card processing hardware or software to retail merchants who willfully violates the provisions of subsection (1) of this section shall be subject to a fine of not more than One Hundred Dollars ($100.00) for a first offense and not more than Five Hundred Dollars ($500.00) for a second offense, and shall be subject to a fine of not more than One Thousand Dollars ($1,000.00) for each subsequent offense.

SOURCES: Laws, 2010, ch. 447, § 1, eff from and after July 1, 2010.

INSURANCE BENEFITS ROOFING REPAIR CONSUMER PROTECTION ACT

Sec.
75-24-301. Title.
75-24-303. Applicablility.
75-24-305. Definitions.
75-24-307. Notice of cancellation.
75-24-309. Commencement of work — cancellation.
75-24-311. Violations.

§ 75-24-301. Title.

Sections 75-24-301 through 75-24-311 shall be known as the "Insurance Benefits Roofing Repair Consumer Protection Act."

SOURCES: Laws, 2014, ch. 477, § 1, eff from and after July 1, 2014.

§ 75-24-303. Applicablility.

Sections 75-24-301 through 75-24-311 apply to a residential roofing repair contract under which a person has contracted with a residential roofing contractor to provide goods or services expected to be paid, in whole or in part, from the benefits of a property and casualty insurance policy.

SOURCES: Laws, 2014, ch. 477, § 2, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by substituting "Sections 75-24-301 through 75-24-311 apply" for "Sections 75-24-301 through 75-24-311 applies." The Joint Committee ratified the correction at its August 5, 2016, meeting.

§ 75-24-305. Definitions.

As used in Sections 75-24-301 through 75-24-311:

(a) "Emergency services" means services performed with the express permission of the insured and that are immediately necessary for:

(i) The preservation of the residential real estate; or

(ii) The health of the insured, owner or possessor.

"Emergency services" does not include inspection of the residential roof system or an estimation of the repair costs.

(b) "Insured" means an insured whose name appears on the face of the property and casualty insurance policy that provides coverage for the residential roof system to be repaired.

(c) "Residential roofing contractor" means a person or entity contracting or offering to contract with an insured, owner or possessor of a residential roof system to repair or replace a roof system on residential real estate, or any portion thereof, where all or part of the cost is expected to be paid as a benefit of a property and casualty insurance policy.

(d) "Residential" means a new or existing dwelling constructed for habitation by one (1) to four (4) families, including a detached garage.

(e) "Insurance benefits residential roof system repair contract" means a written contract with an insured to repair a roof system, or any part thereof, on residential real estate, or provide goods and services in connection with such repair, that is to be paid in whole, or in part, under a property and casualty insurance policy.

(f) "Roof system" means roof coverings, roof sheathing, roof weatherproofing and insulation.

SOURCES: Laws, 2014, ch. 477, § 3, eff from and after July 1, 2014.

§ 75-24-307. Notice of cancellation.

Before signing an insurance benefits residential roof system repair contract with an insured, a residential roofing contractor shall furnish to the insured:

(a) The following statement in at least 10-point boldface type that is attached to the contract:

"You may cancel this insurance benefits residential roof system repair contract at any time within three (3) business days after you have received written notice from your insurance company that all or any part of your claim, or all or part of the services and goods to be provided by this contract, is not a covered loss under your insurance policy. A notice of cancellation form is provided to you with this contract. To cancel this contract under these circumstances, sign and date, and then mail or deliver the attached Notice of Cancellation, or another similar written notice of cancellation, to the contractor within three (3) business days after you have received such written notice from your insurance company. If you cancel, any payments made under this residential roofing system repair contract, except for emergency services and repairs subsequently approved for payment by the insurance company and already performed by the contractor, will be returned to you within ten (10) business days following receipt by the contractor of your cancellation notice."; and

(b) Duplicate copies of a completed form captioned "NOTICE OF CANCELLATION" that is attached to the contract, is easily detachable, and contains the following in at least 10-point boldface type:

"NOTICE OF CANCELLATION

(Name and address of contractor — to be entered by contractor)

(Date of contract — to be entered by contractor)

(Address of residential real estate to be repaired — to be entered by contractor)

I have been notified by my insurance company that all or any part of my claim, or the services and goods to be provided in the residential roofing system repair contract, is not a covered loss under the insurance policy.

I HEREBY CANCEL THIS TRANSACTION
Please return my prior payments within ten (10) days.

______________________ ______________

INSURED'S SIGNATURE DATE"

SOURCES: Laws, 2014, ch. 477, § 4, eff from and after July 1, 2014.

§ 75-24-309. Commencement of work — cancellation.

(1) When any residential roofing contractor in an insurance benefits residential roof system repair contract with an insured commences work before the insured's right to cancel under subsection (2) has expired, the contractor is not allowed to receive payment for such work done before the right to cancel has expired in excess of the scope of work and amount of payment approved by the insurer, if any. The contractor undertakes such work at his own risk that the work may not be covered by the insurance policy.

(2) A person who has entered into an insurance benefits residential roof system repair contract may cancel the residential roof system repair contract within three (3) business days after the insured has received written notice

from the insurer in response to an insurance claim filed that all or any part of the claim or residential roof system repair contract is not a covered loss under the insurance policy.

(3)(a) The insured cancels the insurance benefits residential roof system repair contract by giving written notice of cancellation to the residential roofing contractor in person or by mailing it to the address stated in the residential roof system repair contract.

(b) If the notice of cancellation is given by mail, it is effective upon deposit of the notice in the United States mail, postage prepaid, and properly addressed to the residential roofing contractor.

(c) The notice of cancellation is not required to be in a particular form and is sufficient if it expresses in writing an intention of the insured not to be bound by the insurance benefits residential roof system repair contract.

(4)(a) Within ten (10) days after cancellation of an insurance benefits residential roof system repair contract, the residential roofing contractor shall tender to the insured any payments, partial payments, or deposits made and any note or other evidence of indebtedness.

(b) If the residential roofing contractor has performed any emergency services, the residential roofing contractor is entitled to the reasonable value of such emergency services.

(c) If the residential roofing contractor has performed repairs authorized by the insured that are subsequently approved as to scope and amount as a covered loss by the insurer such that the insured is reimbursed by the insurer, then the residential roofing contractor is entitled to payment for such repairs.

(5) Any provision in an insurance benefits residential roof system repair contract that requires the payment of a fee for anything except emergency services is not enforceable against the insured that has cancelled an insurance benefits residential roof system repair contract under this section.

SOURCES: Laws, 2014, ch. 477, § 5, eff from and after July 1, 2014.

§ 75-24-311. Violations.

(1) Any residential roofing contractor in violation of Sections 75-24-301 through 75-24-311 shall be subject to the civil and criminal penalties and remedies under Sections 75-24-19, 75-24-20 and 75-24-23, and may be liable under a private right of action of the consumer.

(2) A violation of Sections 75-24-301 through 75-24-311 by a residential contractor is an unfair and deceptive act or practice as defined by the Mississippi Consumer Protection Law, Section 75-24-1 et seq.

(3) Sections 75-24-301 through 75-24-311 do not prohibit an insured that is harmed by a deceptive trade practice from commencing a civil action against a residential roofing contractor.

SOURCES: Laws, 2014, ch. 477, § 6, eff from and after July 1, 2014.

BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

SEC.
75-24-351. Definitions [Repealed effective July 1, 2018].
75-24-353. Bad faith assertions of patent infringement; exemptions [Repealed effective July 1, 2018].
75-24-355. Enforcement [Repealed effective July 1, 2018].
75-24-357. Remedies [Repealed effective July 1, 2018].

§ 75-24-351. Definitions [Repealed effective July 1, 2018].

The following words shall have the following meaning, unless the content clearly states otherwise:

(a) "Affiliated person" means a person under common ownership or control of an intended recipient.

(b) "Intended recipient" means a person who purchases, rents, leases or otherwise obtains a product or service in the commercial market that is not for resale in the ordinary business and that is, or later becomes, the subject of a patent infringement allegation.

(c) "Person" means any natural person, partnership, corporation, company, trust, business entity or association, and any agent, employee, partner, officer, director, member, associate, or trustee thereof.

SOURCES: Laws, 2015, ch. 416, § 1, eff from and after July 1, 2015.

Editor's Note — Laws of 2015, Chapter 416, § 5 provides:
"SECTION 5. This act shall take effect and be in force from and after July 1, 2015, and shall stand repealed from and after July 1, 2018."

§ 75-24-353. Bad faith assertions of patent infringement; exemptions [Repealed effective July 1, 2018].

(1) It is a violation of Sections 75-24-351 through 75-24-357 for a person, in connection with the assertion of a United States patent, to send, or cause any person to send, any written or electronic communication that states that the intended recipient or any affiliated person is infringing or has infringed a patent and bears liability or owes compensation to another person if:

(a) The communication threatens litigation if compensation is not paid or the infringement issue is not otherwise resolved and there is a consistent pattern of such threats having been issued and no litigation having been filed;

(b) The communication falsely states that litigation has been filed against the intended recipient or any affiliated person; or

(c) The assertions contained in the communication lack a reasonable basis in fact or law because:

(i) The person asserting the patent is not a person, or does not represent a person, with the current right to license the patent to, or to enforce the patent against, the intended recipient or any affiliated person;

(ii) The communication seeks compensation for a patent that has been held to be invalid or unenforceable in a final, unappealable or unappealed judicial or administrative decision;

(iii) The communication seeks compensation on account of activities undertaken after the patent has expired, or

(iv) The content of the communication fails to include the information necessary to inform an intended recipient or any affiliated person about the patent assertion by failing to include any one of the following:

1. The identity of the person asserting a right to license the patent to or enforce the patent against the intended recipient or any affiliated person;

2. The patent number issued by the United States Patent and Trademark Office alleged to have been infringed; or

3. The factual allegations concerning the specific areas in which the intended recipient or affiliated person's products, services, or technology infringed the patent or are covered by the claims in the patent.

(2) It is not a violation of Sections 75-24-351 through 75-24-357 for any person who owns or has the right to license or enforce a patent to:

(a) Advise others of that ownership or right of license or enforcement;

(b) Communicate to others that a patent is available for license or sale;

(c) Notify another of the infringement of the patent; or

(d) Seek compensation on account of past or present infringement, or for a license to the patent, if the person is not acting in bad faith.

(3) The provisions of Sections 75-24-351 through 75-24-357 shall not apply to any written or electronic communication sent by:

(a) Any owner of a patent who is using the patent in connection with substantial research, development, production, manufacturing, processing or delivery of products or materials;

(b) A state institution of higher learning;

(c) An agency of the State of Mississippi;

(d) A technology transfer organization that is owned by or has a written affiliation agreement with a state institution of higher learning or an agency of the State of Mississippi, or is formed pursuant to Section 37-147-1 et seq.;

(e) Any person that has licensed patent rights from a state institution of higher learning, an agency of the State of Mississippi, or a technology transfer organization that is owned by or has a written affiliation agreement, a state institution of higher learning or an agency of the State of Mississippi, or is formed pursuant to Section 37-147-1 et seq., provided that the ownership of the patent rights remains with the state institution of higher learning, the agency of the State of Mississippi, or the technology transfer organization that is owned by or has a written affiliation agreement with a state institution of higher learning or an agency of the State of Mississippi, or is formed pursuant to Section 37-147-1 et seq.; or

(f) Any person seeking a claim for relief arising under 35 USC Section 271(e)(2) or 42 USC Section 262s.

SOURCES: Laws, 2015, ch. 416, § 2, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in this section by substituting "The provisions of Sections 75-24-351 through 75-24-357" for "The provision of Sections 75-24-351 through 75-24-357" in the introductory language of (3) and by substituting "Section 37-147-1 et seq." for "Section 37-147-1" once in subsection (3)(d) and twice in subsection (3)(e). The Joint Committee ratified the corrections at its August 5, 2016, meeting.

Editor's Note — Laws of 2015, Chapter 416, § 5 provides:

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in this section by substituting "The provisions of Sections 75-24-351 through 75-24-357" for "The provision of Sections 75-24-351 through 75-24-357" in the introductory language of (3) and by substituting "Section 37-147-1 et seq." for "Section 37-147-1" once in subsection (3)(d) and twice in subsection (3)(e). The Joint Committee ratified the corrections at its August 5, 2016, meeting.

Editor's Note — "SECTION 5. This act shall take effect and be in force from and after July 1, 2015, and shall stand repealed from and after July 1, 2018."

§ 75-24-355. Enforcement [Repealed effective July 1, 2018].

(1) The Attorney General shall have the authority under Sections 75-24-351 through 75-24-357 to conduct civil investigations and bring civil actions.

(2) In an action brought by the Attorney General under Sections 75-24-351 through 75-24-357, the court may award or impose any relief available under state law.

(3) In addition to the relief provided for in Section 75-24-357, upon a motion by the Attorney General and a finding by the court that there is a reasonable likelihood that a person violated Section 75-24-353, the court may require the person to post a bond in an amount equal to a good faith estimate of the costs to litigate a claim and amounts reasonably likely to be recovered if an action were to be brought under Section 75-24-355. A hearing shall be held if either party requests a hearing.

SOURCES: Laws, 2015, ch. 416, § 3, eff from and after July 1, 2015.

Editor's Note — Laws of 2015, Chapter 416, § 5 provides:
"SECTION 5. This act shall take effect and be in force from and after July 1, 2015, and shall stand repealed from and after July 1, 2018."

§ 75-24-357. Remedies [Repealed effective July 1, 2018].

An intended recipient alleging a violation of Sections 75-24-351 through 75-24-357 may bring an action in any circuit court in this state. A court shall award litigation costs and fees, including reasonable attorney's fees, to a plaintiff who prevails in an action brought pursuant to this section. In addition, the court may award the following remedies to a plaintiff who prevails in an action brought pursuant to Sections 75-24-351 through 75-24-357:

(a) Actual damages; and

(b) Punitive damages in the amount equal to three (3) times the actual damages.

SOURCES: Laws, 2015, ch. 416, § 4, eff from and after July 1, 2015.

Editor's Note — Laws of 2015, Chapter 416, § 5 provides:
"SECTION 5. This act shall take effect and be in force from and after July 1, 2015, and shall stand repealed from and after July 1, 2018."

CHAPTER 25

Registration of Trademarks and Labels

Sec.

75-25-1. Definitions.
75-25-3. Registrability.
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75-25-7. Examination of application for registration; requirements; effect; appeal; priority of concurrent applications for same or similar marks.
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75-25-25. Owner of famous mark entitled to injunction against another's commercial use of the famous mark; "famous" defined; geographic limitations of injunctive relief; permitted uses of famous mark.
75-25-27. Remedies against counterfeits or imitations.
75-25-29. Actions for cancellation.
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§ 75-25-1. Definitions.

As used in this chapter the following terms shall have the meaning indicated:

(a) The term "trademark" as used herein means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown.

(b) The term "service mark" as used herein means any word, name, symbol or device or any combination thereof used by a person to identify and distinguish the services of one (1) person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

(c) The term "mark" as used herein includes any trademark or service mark entitled to registration under this chapter whether registered or not.

(d) The term "trade name" means any name used by a person to identify a business or vocation of such person.

(e) The term "person" and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of this chapter includes a juristic person as well as a natural person. The term "juristic person" includes a firm, partnership, corporation, union, association or other organization capable of suing and being sued in a court of law.

(f) The term "applicant" as used herein embraces the person filing an application for registration of a mark under this chapter, and the legal representatives, successors or assigns of such person.

(g) The term "registrant" as used herein embraces the person to whom the registration of a mark under this chapter is issued, and the legal representatives, successors or assigns of such person.

(h) The term "use" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this chapter, a mark shall be deemed to be in use:

(1) On goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state, and

(2) On services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

(i) A mark shall be deemed to be "abandoned" when either of the following occurs:

(1) When its use had been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two (2) consecutive years shall constitute prima facie evidence of abandonment; or

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

(j) The term "secretary" as used herein means the Secretary of State or the designee of the secretary charged with the administration of this chapter.

(k) The term "dilution" as used herein means dilution by blurring or dilution by tarnishment, regardless of the presence or absence of:

(1) Competition between the owner of the famous mark and other parties, or

(2) Actual or likely confusion, mistake, or deception, or

(3) Actual economic injury.

(*l*) The term "dilution by blurring" as used herein means association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark.

(m) The term "dilution by tarnishment" as used herein means association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.

SOURCES: Codes, 1942, § 4227-01; Laws, 1952, ch. 338, § 1; Laws, 1971, ch. 437, § 1; Laws, 1996, ch. 402, § 1; Laws, 2009, ch. 386, § 1, eff from and after July 1, 2009.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Laws of 2009, ch. 386, § 14, provides:

"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."

Cross References — Registration of tradenames of businesses covered by meat inspection law, see § 75-35-105.

Counterfeiting and forging of trademarks, see §§ 97-21-53 through 97-21-57.

JUDICIAL DECISIONS

1. In general.

The buyer of a business was entitled to have the seller enjoined from using the name "Ham House" in connection with a new business started after the sale, where the name "Ham House" had become associated with the purchased business, and the seller's use of the name and advertisements similar to those used in the purchased business had created considerable confusion in the operation of the purchased business; the word "Ham House" having become associated with the purchased business, it acquired a secondary meaning protectable by injunction. Richardson v. Thomas, 257 So. 2d 877, 173 U.S.P.Q. 237 (Miss. 1972).

The word "Dixie" is a common geographical term generally used to indicate the southern part of the United States, and no proprietary rights can be acquired in such generic or geographical term. Eggleston v. American Fid. Assurance Co., 245 So. 2d 839 (Miss. 1971).

The facts that an oil company's transport trucks traveled Mississippi's highways bearing the words "Another Load of Dixie Gas", and that over a three or four year period about ten thousand automobiles in the state bore bumper stickers stating "I Use Dixie Gas" were not sufficient to support the company's claim to the exclusive use of the trade name "Dixie Gas" over the entire state, where the trucks hauled gasoline only from the company's bulk plant to local stations, rather than traveling all over the state, and where the bumper stickers were the result of a single contest, rather than the product of a continuous advertising campaign. Eggleston v. American Fid. Assurance Co., 245 So. 2d 839 (Miss. 1971).

RESEARCH REFERENCES

ALR. Abandonment of trademark or tradename. 3 A.L.R.2d 1226.

Unfair competition: geographical extent of protection of word or symbol under doctrine of secondary meaning. 41 A.L.R.3d 434.

Design on recreational object as valid trademark. 82 A.L.R. Fed. 9.

What constitutes "famous mark" for purposes of federal Trademark Dilution Act, 15 USCS § 1125(c), which provides remedies for dilution of famous marks. 165 A.L.R. Fed. 625.

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames § 2 et seq.

17 Am. Jur. Legal Forms 2d, Trademarks and Tradenames § 247:11 et seq. (license agreements).

37 Am. Jur. Proof of Facts 2d 67, Cancellation of Registration of Trademark that has Become Generic Term.

22 Am. Jur. Proof of Facts 3d 691, Proof

of Distinctiveness and Secondary Meaning of Trademark or Service Mark.

CJS. 87 C.J.S., Trademarks, Trade Names, and Unfair Competition § 2 et seq.

Law Reviews. Walker, Common Law protection of economic expectancies: "Business Torts" in Mississippi. 50 Miss. L. J. 335, March 1979.

Practice References. Jerome Gilson and Anne Gilson LaLonde, Gilson on Trademarks (Matthew Bender).

Horwitz, Intellectual Property Counseling and Litigation (Matthew Bender).

§ 75-25-3. Registrability.

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(a) Consists of or comprises immoral, deceptive or scandalous matter; or

(b) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or

(c) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or any foreign nation, or any simulation thereof; or

(d) Consists of or comprises the name, signature or portrait identifying a particular living individual, except by the individual's written consent; or

(e) Consists of a mark which, (1) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them, or (2) when used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (3) is primarily merely a surname; however, nothing in this subsection (e) shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state for the five (5) years before the date on which the claim of distinctiveness is made; or

(f) Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

SOURCES: Codes, 1942, § 4227-02; Laws, 1952, ch. 338, § 2; Laws, 1971, ch. 437, § 2; Laws, 1996, ch. 402, § 2; Laws, 2009, ch. 386, § 2, eff from and after July 1, 2009.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Laws of 2009, ch. 386, § 14, provides:

"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."

RESEARCH REFERENCES

ALR. Reverse confusion doctrine under state trademark law. 114 A.L.R.5th 129.

When does product mark become generic term or "common descriptive name" so as to warrant cancellation of registration of mark, pursuant to § 14 of Lanham Act (15 USCS § 1046). 55 A.L.R. Fed. 241.

When does product become generic term so as to warrant cancellation of registration of mark, pursuant to § 14 of Lanham Act (15 USCS § 1064). 156 A.L.R. Fed. 131.

Reverse confusion doctrine under Lanham Trademark Act. 187 A.L.R. Fed. 271.

Am Jur. 60 Am. Jur. 2d, Patents §§ 1-10.

74 Am. Jur. 2d, Trademarks and Tradenames §§ 73, 74.

37 Am. Jur. Proof of Facts 2d 67, Cancellation of Registration of Trademark that has Become Generic Term.

CJS. 87 C.J.S., Trademarks, Trade Names, and Unfair Competition § 191 et seq.

§ 75-25-5. Application for registration; requirements.

(a) Subject to the limitations set forth in this chapter, any person who uses a mark may file in the office of the secretary, in a manner complying with the requirements of the secretary, an application for registration of that mark setting forth, but not limited to, the following information:

(1) The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation, or if a partnership or other entity, the state in which the entity is organized and the names of the general partners, owners and/or managers, as specified by the secretary;

(2) The goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall;

(3) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or predecessor in interest; and

(4) A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive.

(b) The secretary may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest in the United States Patent and Trademark Office; and, if so, the applicant shall provide full particulars with respect thereto including the filing date and serial number of each application, the status thereof and, if any application was finally refused registration or has otherwise not resulted in a registration, the reasons therefor.

(c) The secretary may also require that a drawing of the mark, complying with such requirements as the secretary may specify, accompany the application.

(d) The application shall be signed and verified by oath, affirmation or declaration subject to perjury laws by the applicant or by a member of the firm or an officer of the corporation or association applying.

(e) The application shall be accompanied by three (3) specimens showing the mark as actually used.

(f) The application shall be accompanied by the application fee payable to the Secretary of State.

SOURCES: Codes, 1942, § 4227-03; Laws, 1938, ch. 159; Laws, 1952, ch. 338, § 3; Laws, 1971, ch. 437, § 3; Laws, 1981, ch. 431, § 4; Laws, 1985, ch. 381, § 7; Laws, 1996, ch. 402, § 3; Laws, 2009, ch. 386, § 3, eff from and after July 1, 2009.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Laws of 2009, ch. 386, § 14, provides:

"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."

JUDICIAL DECISIONS

1. In general.

RV seller did not violate Miss. Code Ann. § 75-24-5(2)(f)-(g) (2002) when it sold a previously damaged RV to a purchaser because the RV and the replacement parts were new, so the RV met all applicable standards and was merchantable and fit for ordinary use. Byrd v. Paw Paw's Camper City, 967 So. 2d 1251 (Miss. Ct. App. 2007).

RESEARCH REFERENCES

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames §§ 64, 75, 76.

17A Am. Jur. Legal Forms 2d, Trademarks and Trade Names § 247:13 et seq. (Application for registration of trademarks).

CJS. 87 C.J.S., Trademarks, Trade Names, and Unfair Competition § 191.

Practice References. Jerome Gilson and Anne Gilson LaLonde, Gilson on Trademarks (Matthew Bender).

Horwitz, Intellectual Property Counseling and Litigation (Matthew Bender).

§ 75-25-7. Examination of application for registration; requirements; effect; appeal; priority of concurrent applications for same or similar marks.

(a) Upon the filing of an application for registration and payment of the application fee, the secretary may cause the application to be examined for conformity with this chapter.

(b) The applicant shall provide any additional pertinent information requested by the secretary including a description of a design mark and may make, or authorize the secretary to make, such amendments to the application as may be reasonably requested by the secretary or deemed by applicant to be advisable to respond to any rejection or objection.

(c) The secretary may require the applicant to disclaim an unregisterable component of a mark otherwise registerable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter be or shall have become distinctive of the applicant's or registrant's goods or services.

(d) Amendments may be made by the secretary upon the application submitted by the applicant upon applicant's agreement; or a fresh application may be required to be submitted.

(e) If the applicant is found not to be entitled to registration, the secretary shall advise the applicant thereof and of the reasons therefor. The applicant shall have a reasonable period of time specified by the secretary in which to reply or to amend the application, in which event the application shall then be reexamined. This procedure may be repeated until:

(1) The secretary finally refuses registration of the mark; or

(2) the applicant fails to reply or amend within the specified period, whereupon the application shall be deemed to have been abandoned.

(f) If the secretary finally refuses registration of the mark, the applicant may appeal such refusal to the First Judicial District of the Hinds County Chancery Court. The secretary's refusal may be reversed, but without costs to the secretary, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.

(g) In the instance of applications concurrently being processed by the secretary seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary shall grant priority to the applications in order of filing. If a prior-filed application is granted a registration, the other application or applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with the provisions of Section 75-25-17.

SOURCES: Codes, 1942, § 4227-04; Laws, 1938, ch. 159; Laws, 1952, ch. 338, § 4; Laws, 1971, ch. 437, § 4; Laws, 1996, ch. 402, § 4; Laws, 2009, ch. 386, § 4, eff from and after July 1, 2009.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Laws of 2009, ch. 386, § 14, provides:

"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."

Cross References — Secretary defined as the Secretary of State or the secretary's designee charged with the administration of this chapter, see § 75-25-1.

Fees, see § 75-25-33.

RESEARCH REFERENCES

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames §§ 68, 75, 76.

CJS. 87 C.J.S., Trademarks, Trade Names, and Unfair Competition § 191.

Law Reviews. Walker, Common Law protection of economic expectancies: "Business Torts" in Mississippi. 50 Miss. L. J. 335, March 1979.

§ 75-25-9. Issuance and delivery of certificate of registration; admissibility in evidence.

Upon compliance by the applicant with the requirements of this chapter, the secretary shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, or if a partnership or other entity, the state in which the partnership or other entity is organized and the names of the general partners, owners, and/or managers, as specified by the secretary, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services on or in connection with which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

Any certificate of registration issued by the secretary under the provisions hereof or a copy thereof duly certified by the secretary shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any actions or judicial proceedings in any court of this state.

SOURCES: Codes, 1942, § 4227-05; Laws, 1952, ch. 338, § 5; Laws, 1958, ch. 346, § 3; Laws, 1971, ch. 437, § 5; Laws, 1985, ch. 381, § 8; Laws, 1996, ch. 402, § 5, eff from and after January 1, 1997.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Cross References — Secretary defined as the Secretary of State or the secretary's designee charged with the administration of this chapter, see § 75-25-1.

RESEARCH REFERENCES

ALR. Abandonment of trademark or tradename. 3 A.L.R.2d 1226.

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames §§ 68, 75, 76.

20 Am. Jur. Pl & Pr Forms (Rev), Private Franchise Contracts, Forms 31 et seq. (termination of franchise).

§ 75-25-11. Duration and renewal.

(a) A registration of a mark hereunder shall be effective for a term of five (5) years from the date of registration and, upon application filed within six (6) months prior to the expiration of such term, in a manner complying with the requirements of the secretary, the registration may be renewed for a like term from the end of the expiring term. A renewal fee, payable to the secretary, shall accompany the application for renewal of the registration.

(b) A registration may be renewed for successive periods of five (5) years in like manner.

(c) All applications for renewal, whether of registrations made under this chapter or of registrations effected under any prior act, shall include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

SOURCES: Codes, 1942, § 4227-06; Laws, 1952, ch. 338, § 6; Laws, 1958, ch. 346, § 4; Laws, 1971, ch. 437, § 6; Laws, 1985, ch. 381, § 9; Laws, 1996, ch. 402, § 6; Laws, 2009, ch. 386, § 5, eff from and after July 1, 2009.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Laws of 2009, ch. 386, § 14, provides:

"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."

Cross References — Secretary defined as the Secretary of State or the secretary's designee charged with the administration of this chapter, see § 75-25-1.

RESEARCH REFERENCES

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames § 19 et seq.

CJS. 87 C.J.S., Trademarks, Trade Names, and Unfair Competition §§ 250, 251 et seq.

§ 75-25-13. Assignment; requirements.

(a) Any mark and its registration hereunder shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary upon the payment of the recording fee, payable to the secretary, who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the secretary within three (3) months after the date thereof or prior to such subsequent purchase.

(b) Any registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the secretary upon the payment of the recording fee. The secretary may issue in the name of the assignee a certificate of registration of an assigned application. The secretary may issue in the name of the assignee, a new certificate or registration for the remainder of the term of the registration or last renewal thereof.

(c) Other instruments which relate to a mark registered or application pending pursuant to this chapter, such as, by way of example, licenses, security interests or mortgages, may be recorded in the discretion of the secretary, provided that such instrument is in writing and duly executed.

(d) Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the secretary, the record shall be prima facie evidence of execution.

(e) A photocopy of any instrument referred to in subsections (a), (b), or (c) above, shall be accepted for recording if it is certified by any of the parties thereto, or their successors, to be a true and correct copy of the original.

SOURCES: Codes, 1942, § 4227-07; Laws, 1938, ch. 159; Laws, 1952, ch. 338, § 7; Laws, 1971, ch. 437, § 7; Laws, 1996, ch. 402, § 7; Laws, 2009, ch. 386, § 6, eff from and after July 1, 2009.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Laws of 2009, ch. 386, § 14, provides:

"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."

Cross References — Secretary defined as the Secretary of State or the secretary's designee charged with the administration of this chapter, see § 75-25-1.

§ 75-25-15. Record of marks registered or renewed, or documents recorded.

The secretary shall keep for public examination a record of all marks registered or renewed under this chapter, as well as a record of all documents recorded pursuant to Section 75-25-13.

SOURCES: Codes, 1942, § 4227-08; Laws, 1952, ch. 338, § 8; Laws, 1971, ch. 437, § 8; Laws, 1996, ch. 402, § 8, eff from and after January 1, 1997.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:
"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Cross References — Secretary defined as the Secretary of State or the secretary's designee charged with the administration of this chapter, see § 75-25-1.

RESEARCH REFERENCES

ALR. Abandonment of trademark or tradename. 3 A.L.R.2d 1226.

When does product mark become generic term or "common descriptive name" so as to warrant cancellation of registration of mark, pursuant to § 14 of Lanham Act (15 USCS § 1046). 55 A.L.R. Fed. 241.

What constitutes abandonment of trademark by conduct causing mark to lose significance as indication of origin, under sec. 45 of Lanham Act (15 USCS § 1127(b). 81 A.L.R. Fed. 677.

When does product become generic term so as to warrant cancellation of registration of mark, pursuant to § 14 of Lanham Act (15 USCS § 1064). 156 A.L.R. Fed. 131.

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames §§ 72-76.

CJS. 87 C.J.S., Trademarks, Trade Names, and Unfair Competition § 194.

§ 75-25-17. Cancellation.

The secretary shall cancel from the register, in whole or in part:

(a) Any registration concerning which the secretary shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

(b) All registrations granted under this chapter and not renewed in accordance with the provisions hereof;

(c) Any registration concerning which a court of competent jurisdiction shall find:

(1) That the registered mark has been abandoned,

(2) That the registrant is not the owner of the mark,

(3) That the registration was granted improperly,

(4) That the registration was obtained fraudulently,

(5) That the mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered,

(6) That the registered mark is so similar, as to be likely to cause confusion or mistake, or to deceive, to a mark registered by another person in the United States Patent and Trademark Office prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that, should the registrant prove that the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office covering an area including this state, the registration hereunder shall not be cancelled for such area of the state; or

(d) When a court of competent jurisdiction shall order cancellation of a registration on any ground.

SOURCES: Codes, 1942, § 4227-09; Laws, 1952, ch. 338, § 9; Laws, 1971, ch. 437, § 9; Laws, 1996, ch. 402, § 9; Laws, 2009, ch. 386, § 7, eff from and after July 1, 2009.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Laws of 2009, ch. 386, § 14, provides:

"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."

Cross References — Secretary defined as the Secretary of State or the secretary's designee charged with the administration of this chapter, see § 75-25-1.

RESEARCH REFERENCES

ALR. Reverse confusion doctrine under state trademark law. 114 A.L.R.5th 129.

Parody as trademark or tradename infringement. 92 A.L.R. Fed. 25.

When does product become generic term so as to warrant cancellation of registration of mark, pursuant to § 14 of Lanham Act (15 U.S.C.S. § 1064). 156 A.L.R. Fed. 131.

Initial interest confusion doctrine under Lanham Trademark Act. 183 A.L.R. Fed. 553.

Reverse confusion doctrine under Lanham Trademark Act. 187 A.L.R. Fed. 271.

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames § 38 et seq.

§ 75-25-19. Classification.

The secretary shall by regulation establish a classification of goods and services for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the secretary may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office.

SOURCES: Codes, 1942, § 4227-10; Laws, 1952, ch. 338, § 10; Laws, 1971, ch. 437, § 10; Laws, 1996, ch. 402, § 10; Laws, 2009, ch. 386, § 8, eff from and after July 1, 2009.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Laws of 2009, ch. 386, § 14, provides:

"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."

Cross References — Secretary defined as the Secretary of State or the secretary's designee charged with the administration of this chapter, see § 75-25-1.

Counterfeiting and forging of trademarks, see §§ 97-21-53 to 97-21-57.

ATTORNEY GENERAL OPINIONS

Weighing devices with a capacity of 10,000 pounds or more used to weigh road construction materials are to be tested, examined and approved or condemned by the Department of Transportation, and the Mississippi Department of Agriculture and Commerce can not enter into a contract with the Department of Transportation providing for the Department of Agriculture and Commerce to test such weighing devices. Spell, May 14, 1999, A.G. Op. #99-0227.

§ 75-25-21. Fraudulent filing or registration; liability.

Any person who shall for himself or herself, or on behalf of any other persons, procure the filing or registration of any mark in the office of the secretary under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

SOURCES: Codes, 1942, § 4227-11; Laws, 1952, ch. 338, § 11; Laws, 1971, ch. 437, § 11; Laws, 1996, ch. 402, § 11, eff from and after January 1, 1997.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Cross References — Counterfeiting and forging of trademarks, see §§ 97-21-53 to 97-21-57.

RESEARCH REFERENCES

ALR. Parody as trademark or tradename infringement. 92 A.L.R. Fed. 25.

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames § 77 et seq.

4 Am. Jur. Legal Forms 2d, Business Franchises § 50:125 et seq. (limitations on franchisee's use of trademark).

5 Am. Jur. Pl & Pr Forms (Rev), Captions, etc., Forms 722-725 (prayers for relief in restraining use of trademark or tradename).

3 Am. Jur. Proof of Facts 2d, Trade Dress (Packaging) Simulation, § 9 et seq. (proof of actionable trade dress simulation).

38 Am. Jur. Proof of Facts 2d 333, Limited Publication of Artistic or Literary Property.

47 Am. Jur. Proof of Facts 2d 643, Wrongful Use of Another's Trademark or Tradename.

50 Am. Jur. Proof of Facts 2d 263, Damages for Copyright Infringement.

17 Am. Jur. Proof of Facts 3d 609, Monetary Recovery for Trademark Infringement.

8 Am. Jur. Trials 359, Trademark Infringement and Unfair Competition Litigation.

CJS. 87 C.J.S., Trademarks, Trade Names, and Unfair Competition §§ 80-89, 91, 115, 119, 131.

§ 75-25-23. Liability for infringement; limitations.

Subject to the provisions of Section 75-25-31 hereof, any person who shall:

(a) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter, in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(b) Reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services; shall be liable in a civil action by the registrant for any and all of the remedies provided in Section 75-25-27 hereof, except that under paragraph (b) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

SOURCES: Codes, 1942, § 4227-12; Laws, 1952, ch. 338, § 12; Laws, 1971, ch. 437, § 12; Laws, 1996, ch. 402, § 12, eff from and after January 1, 1997.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

RESEARCH REFERENCES

ALR. World Wide Web domain as violating state trademark protection statute or state Unfair Trade Practices Act. 96 A.L.R.5th 1.

Propriety of ordering consolidation under Rule 42(a) of Federal Rules of Civil Procedure in actions involving patents, copyrights, or trademarks. 82 A.L.R. Fed. 719.

Parody as trademark or tradename infringement. 92 A.L.R. Fed. 25.

When is trade dress "inherently distinctive" for purposes of trade dress infringement actions under § 43(a) of Lanham Act (15 USCS § 1125(a)) — Cases after Two Pesos. 161 A.L.R. Fed. 327.

Parody as trademark or tradename dilution or infringement. 179 A.L.R. Fed. 181.

Application of doctrine of "reverse passing off" under Lanham Act. 194 A.L.R. Fed. 175.

Lanham Act trademark infringement actions in internet and website context. 197 A.L.R. Fed. 17.

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames § 137 et seq.

5 Am. Jur. Pl & Pr Forms (Rev), Captions, etc., Forms 722-725.

8 Am. Jur. Trials 359, Trademark Infringement and Unfair Competition Litigation.

3 Am. Jur. Proof of Facts 2d, Trade Dress (Packaging) Simulation, § 9 et seq. (proof of actionable trade dress simulation).

47 Am. Jur. Proof of Facts 2d 643, Wrongful Use of Another's Trademark or Tradename.

50 Am. Jur. Proof of Facts 2d 263, Damages for Copyright Infringement.

CJS. 87 C.J.S., Trademarks, Trade Names, and Unfair Competition § 272 et seq.

§ 75-25-25. Owner of famous mark entitled to injunction against another's commercial use of the famous mark; "famous" defined; geographic limitations of injunctive relief; permitted uses of famous mark.

(a) Subject to the principles of equity, the owner of a mark which is famous and distinctive, inherently or through acquired distinctiveness, in this state shall be entitled to an injunction against another person's commercial use of a mark or trade name, if such use begins after the mark has become famous and is likely to cause dilution of the famous mark, and to obtain such other relief as is provided in this section.

(b) A mark is famous if it is widely recognized by the general consuming public of this state or a geographic area in this state as a designation of source of the goods or services of the mark's owner. In determining whether a mark is famous, a court may consider factors such as, but not limited to:

(1) The duration, extent, and geographic reach of advertising and publicity of the mark in this state, whether advertised or publicized by the owner or third parties;

(2) The amount, volume, and geographic extent of sales of goods or services offered under the mark in this state;

(3) The extent of actual recognition of the mark in this state; and

(4) Whether the mark is the subject of a state registration in this state, or a federal registration under the Act of March 3, 1881, or under the Act of February 20, 1905, or on the principal register under the Trademark Act of 1946, as amended.

(c) In an action brought under this section, the owner of a famous mark shall be entitled to injunctive relief throughout the geographic area in which the mark is found to have become famous prior to commencement of the junior use, but not beyond the borders of this state. If the person against whom the injunctive relief is sought willfully intended to cause dilution of the famous mark, then the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

(d) The following shall not be actionable under this section:

(1) Any fair use, including a nominative or descriptive fair use, or facilitation of such fair use, of a famous mark by another person other than as a designation of source for the person's own goods or services, including use in connection with:

(A) Advertising or promotion that permits consumers to compare goods or services; or

(B) Identifying and parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner;

(2) Noncommercial use of the mark; and

(3) All forms of news reporting and news commentary.

SOURCES: Codes, 1942, § 4227-13; Laws, 1952, ch. 338, § 13; Laws, 1971, ch. 437, § 13; Laws, 1996, ch. 402, § 13; Laws, 2009, ch. 386, § 9, eff from and after July 1, 2009.

Editor's Note — Act March 3, 1881, and Act February 20, 1905, referred to in this section, are Act March 3, 1881, ch. 138, 21 Stat. 502, and Act Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with the Trademark Act of 1946, 15 USCS § 1051 et seq. by Act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905 formerly appeared as 15 USCS § 81 et seq.

Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Laws of 2009, ch. 386, § 14, provides:

"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."

Federal Aspects — Trademark Act of 1946, see generally 15 USCS § 1501 et seq.

JUDICIAL DECISIONS

1. Requirement that trademark be famous.
2. Denial of preliminary injunction.

1. Requirement that trademark be famous.

In a case in which an artist did not show that his trademark was famous, which was an essential element for a claim of trademark dilution under Miss. Code Ann. § 75-25-25, his trademark dilution claim against an entertainment company failed. Montalto v. Viacom Int'l, Inc., 545 F. Supp. 2d 556 (S.D. Miss. 2008).

2. Denial of preliminary injunction.

In an action brought by a restaurant alleging unfair trade practices, unfair competition, and trademark dilution under 15 USCS § 1125 and Miss. Code Ann. § 75-25-25, competitors were not entitled to enjoin under 28 USCS §§ 1651 and 2283 of the All Writs Act and the Anti-Injunction Act a pending state suit also brought by the restaurant against the competitors because the issues presented in the state case were not the same issues that were presented to and decided by the court when it denied the restaurant's motion for a preliminary injunction under 15 USCS § 1116. Brennan's, Inc. v. Brennan, 629 F. Supp. 2d 634 (S.D. Miss. May 7, 2009).

RESEARCH REFERENCES

ALR. Letters, initials or numerals as common-law trademarks. 56 A.L.R. Fed. 232.

Parody as trademark or tradename infringement. 92 A.L.R. Fed. 25.

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames § 19 et seq.

§ 75-25-27. Remedies against counterfeits or imitations.

(a) Any owner of a mark registered under this chapter may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed three (3) times such profits and damages and/or reasonable attorneys' fees of the prevailing party in such cases where the court finds the other party committed such wrongful acts with knowledge or in bad faith or otherwise as according to the circumstances of the case.

(b) The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

SOURCES: Codes, 1942, § 4227-16; Laws, 1938, ch. 159; Laws, 1952, ch. 338, § 16; Laws, 1996, ch. 402, § 14; Laws, 2009, ch. 386, § 10, eff from and after July 1, 2009.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Laws of 2009, ch. 386, § 14, provides:

"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."

Cross References — Enforcement by civil action, see § 75-25-23.

§ 75-25-29. Actions for cancellation.

(a) Actions to require cancellation of a mark registered pursuant to this chapter or to appeal the secretary's refusal to register a mark pursuant to this chapter shall be brought in the First Judicial District of the Hinds County Chancery Court. In an appeal of the secretary's refusal to register a mark, the proceeding shall be based solely upon the record before the secretary. In an action for cancellation, the secretary shall not be made a party to the proceeding but shall be notified of the filing of the complaint by the clerk of the court and shall be given the right to intervene in the action.

(b) In any action brought against a nonresident registrant, service may be effected by any means authorized by the Mississippi Rules of Civil Procedure.

SOURCES: Laws, 1996, ch. 402, § 15; Laws, 2009, ch. 386, § 11, eff from and after July 1, 2009.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Laws of 2009, ch. 386, § 14, provides:

"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."

Cross References — Secretary defined as the Secretary of State or the secretary's designee charged with the administration of this chapter, see § 75-25-1.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations § 386.

74 Am. Jur. 2d, Trademarks and Tradenames §§ 58, 70-72.

§ 75-25-31. Good faith acquisition of marks.

Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

SOURCES: Laws, 1996, ch. 402, § 16, eff from and after January 1, 1997.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error by substituting "rights or the enforcement" for "rights of the enforcement." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:

"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."

Cross References — Enforcement by civil action, see § 75-25-23.

RESEARCH REFERENCES

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames §§ 7-9, 51.

CJS. 87 C.J.S., Trademarks, Trade Names and Unfair Competition §§ 45, 136-141, 161, 162, 213-216, 297, 317-328.

§ 75-25-33. Fees.

Fees required by this chapter shall be submitted to the secretary and shall not be refundable. The amount of such fees shall be as follows:

Resident Application	$ 50.00
Nonresident Application	$ 60.00
Resident Renewal	$ 50.00
Nonresident Renewal	$ 60.00
Assignment	$ 50.00

SOURCES: Laws, 1996, ch. 402, § 17, eff from and after January 1, 1997.

Editor's Note — Laws of 1996, ch. 402, § 18, provides as follows:
"SECTION 18. If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby."
Cross References — Secretary defined as the Secretary of State or the secretary's designee charged with the administration of this chapter, see § 75-25-1.

RESEARCH REFERENCES

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames §§ 57, 64, 75, 129, 130, 132.

§ 75-25-35. Severability.

If any provision of this chapter, or the application of such provision to any person or circumstances is held invalid, the remainder of this chapter shall not be affected thereby.

SOURCES: Laws, 2009, ch. 386, § 12, eff from and after July 1, 2009.

Editor's Note — Laws of 2009, ch. 386, § 14, provides:
"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."

§ 75-25-37. Legislative intent; construction.

The intent of this chapter is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, as amended. To that end, the construction given the federal act should be examined as persuasive authority for interpreting and construing this chapter.

SOURCES: Laws, 2009, ch. 386, § 13, eff from and after July 1, 2009.

Editor's Note — Laws of 2009, ch. 386, § 14, provides:
"SECTION 14. This act shall take effect and be in force from and after July 1, 2009, but shall not affect any application, suit, proceeding or appeal then pending."
Federal Aspects — Trademark Act of 1946, see generally 15 USCS § 1501 et seq.

CHAPTER 26

Mississippi Uniform Trade Secrets Act

SEC.
75-26-1. Short title.
75-26-3. Definitions.
75-26-5. Injunctive relief; protective orders.
75-26-7. Damages for misappropriation; liability for royalty.
75-26-9. Attorney's fees.
75-26-11. Protection of trade secrets during action.
75-26-13. Statute of limitations.
75-26-15. Application of provisions to other laws, actions or proceedings.
75-26-17. Construction of provisions.
75-26-19. Severability provisions.

§ 75-26-1. Short title.

This chapter may be cited as the Mississippi Uniform Trade Secrets Act.

SOURCES: Laws, 1990, ch. 442, § 1, eff from and after July 1, 1990.

Editor's Note — Laws of 1990, ch. 442, § 18, effective July 1, 1990, provides as follows:

"SECTION 18. This act shall take effect and be in force from and after July 1, 1990, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the act also does not apply to the continuing misappropriation that occurs after the effective date."

Comparable Laws from other States — Alabama: Code of Ala. § 8-27-1 et seq.
Alaska: Alaska Stat. § 45.50.910 et seq.
Arizona: A.R.S. § 44-401 et seq.
Arkansas: A.C.A. § 4-75-601 et seq.
California: Cal Civ Code § 3426 et seq.
Colorado: C.R.S. 7-74-101 et seq.
Connecticut: Conn. Gen. Stat. § 35-50 et seq.
Delaware: 6 Del. C. § 2001 et seq.
District of Columbia: D.C. Code § 36-401 et seq.
Arkansas: A.C.A. § 4-75-601 et seq.
Florida: Fla. Stat. § 688.001 et seq.
Georgia: O.C.G.A. § 10-1-760 et seq.
Hawaii: HRS § 482B-1 et seq.
Idaho: Idaho Code § 48-801 et seq.
Illinois: 765 ILCS 1065/1 et seq.
Indiana: Burns Ind. Code Ann. § 24-2-3-1 et seq.
Iowa: Iowa Code § 550.1 et seq
Kansas: K.S.A. § 60-3320 et seq.
Kentucky: KRS § 365.880 et seq.
Louisiana: La. R.S. § 51:1431 et seq.
Maine: 10 M.R.S. § 1541 et seq.
Maryland: Md. COMMERCIAL LAW Code Ann. § 11-1201 et seq.
Michigan: MCLS § 445.1901 et seq.
Minnesota: Minn. Stat. § 325C.01 et seq.
Missouri: § 417.450 R.S.Mo. et seq.

Montana: 30-14-401, MCA et seq.
Nebraska: R.R.S. Neb. § 87-501 et seq.
Nevada: Nev. Rev. Stat. Ann. § 600A.010 et seq.
New Hampshire: RSA 350-B:1 et seq.
New Jersey: N.J. Stat. § 56:15-1 et seq.
New Mexico: N.M. Stat. Ann. § 57-3A-1 et seq.
North Carolina: N.C. Gen. Stat. § 66-152 et seq.
North Dakota: N.D. Cent. Code, § 47-25.1-01 et seq.
Ohio: ORC Ann. 1333.61 et seq.
Oklahoma: 78 Okl. St. § 85 et seq.
Oregon: ORS §§ 646.461 through 646.475 et seq.
Pennsylvania: 12 Pa.C.S. § 5301 et seq.
Rhode Island: R.I. Gen. Laws § 6-41-1 et seq.
South Carolina: S.C. Code Ann. § 39-8-10 et seq.
South Dakota: S.D. Codified Laws § 37-29-1 et seq.
Tennessee: Tenn. Code Ann. § 47-25-1701 et seq.
Texas: Tex. Civ. Prac. & Rem. Code § 134A.001 et seq.
Utah: Utah Code Ann. § 13-24-1 et seq.
Vermont: 9 V.S.A. § 4601 et seq.
Virgin Islands: 11 V.I.C. § 1001 et seq.
Virginia: Va. Code Ann. § 59.1-336 et seq.
Washington: Rev. Code Wash. (ARCW) § 19.108.010 et seq.
West Virginia: W. Va. Code § 47-22-1 et seq.
Wisconsin: Wis. Stat. § 134.90 et seq.
Wyoming: Wyo. Stat. § 40-24-101 et seq.

JUDICIAL DECISIONS

1. Summary judgment.

Company and the agents were entitled to summary judgment on the developer's misappropriation of trade secrets claim under the Mississippi Uniform Trade Secrets Act, Miss. Code Ann. § 75-26-1 et seq., because the developer's failure to present an expert precluded him from the ability to establish that his software in the circumstances was not being readily ascertainable by proper means by other persons by reverse engineering, and the developer's efforts to keep his software secret were sorely inadequate. Pepper v. Int'l Gaming Sys., LLC, 312 F. Supp. 2d 853 (N.D. Miss. 2004).

RESEARCH REFERENCES

Practice References. Horwitz, Intellectual Property Counseling and Litigation (Matthew Bender).

Milgrim on Trade Secrets (Matthew Bender).

§ 75-26-3. Definitions.

As used in this chapter, unless the context requires otherwise:

(a) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(b) "Misappropriation" means:

(i) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(ii) Disclosure or use of a trade secret of another without express or implied consent by a person who:

1. Used improper means to acquire knowledge of the trade secret; or

2. At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

a. Derived from or through a person who had utilized improper means to acquire it;

b. Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

c. Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limits its use; or

3. Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(c) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity.

(d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process, that:

(i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

SOURCES: Laws, 1990, ch. 442, § 2, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. Trade secret.
2. Misappropriation.

1. Trade secret.

Because a pipeline services company had obtained a patent on its design for a six-inch, trailer-mounted flare stack, the flare stack's design was readily ascertainable by proper means and therefore, by definition, was not a trade secret. Expro Ams., LLC v. Walters, 179 So. 3d 1010 (Miss. 2015).

Because a service provider failed to base its allegations of fraud on any specific facts, a chancery court did not abuse its discretion in refusing to allow the provider access to the highly confidential pricing models of its primary competitor under Miss. R. Civ. P. 26(d)(7) and Miss. Code Ann. § 75-26-3(d). Elec. Data Sys. Corp. v. Miss. Div. of Medicaid, 853 So. 2d 1192 (Miss. 2003).

By soliciting and selling made-to-order clothing within a restricted time period and geographic area through use of a customer list that was a trade secret under Miss. Code Ann. § 75-26-3, the employee breached his employment contract and was liable for a refund of value for the cost of training him and attorney's fee costs for enforcing the agreement; the court awarded the company summary judgment on the issue of liability but not as to damages. Tom James Co. v. Hudgins, 261 F. Supp. 2d 636 (S.D. Miss. 2003).

Appellate court reversed the granting of an injunction where the chancellor did not properly consider whether an alleged secret was readily ascertainable by proper means. Marshall v. Gipson Steel, Inc., 806 So. 2d 266 (Miss. 2002).

A customer list was a trade secret since the list had independent economic value as evidenced by the fact that marketing companies were willing to pay money to obtain it and as the plaintiff took reasonable steps to maintain the secrecy of the list. Fred's Stores, Inc. v. M & H Drugs, Inc., 725 So. 2d 902 (Miss. 1998).

The chancellor erred when he applied the strict definition of a trade secret found in subsection (d) as the sole standard to measure the availability under § 25-61-9 to the general public of a proposal to operate a coin operated laundry facility for a university since the Public Records Act protects a broader range of information than just that covered under the definition contained in the Trade Secrets Act. Caldwell & Gregory, Inc. v. University of S. Miss., 716 So. 2d 1120 (Ct. App. 1998).

2. Misappropriation.

Because defendant former employer stated only that defendant former employee may have contacted the employer's customers indirectly or may have caused a letter to be sent from a former supplier to a customer trying to "stir up trouble," but the employer's representative stated he had no proof that the employee had communicated what the employer considered to be privileged or confidential information to a third party, a misappropriation of trade secrets claim under Miss. Code Ann. § 75-26-3(b), (d), 75-26-5, was not likely to prevail on the merits for purposes of a preliminary injunction. Block Corp. v. Nunez, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 34374 (N.D. Miss. Apr. 25, 2008).

§ 75-26-5. Injunctive relief; protective orders.

(1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

SOURCES: Laws, 1990, ch. 442, § 3, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. Merits of claim.

Because defendant former employer stated only that defendant former employee may have contacted the employer's customers indirectly or may have caused a letter to be sent from a former supplier to a customer trying to "stir up trouble," but the employer's representative stated he had no proof that the employee had communicated what the employer considered to be privileged or confidential information to a third party, a misappropriation of trade secrets claim under Miss. Code Ann. § 75-26-3(b), (d), 75-26-5, was not likely to prevail on the merits for purposes of a preliminary injunction. Block Corp. v. Nunez, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 34374 (N.D. Miss. Apr. 25, 2008).

§ 75-26-7. Damages for misappropriation; liability for royalty.

(1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages.

SOURCES: Laws, 1990, ch. 442, § 4, eff from and after July 1, 1990.

Cross References — Punitive damages, generally, see § 11-1-65.

§ 75-26-9. Attorney's fees.

If (a) a claim of misappropriation is made in bad faith, (b) a motion to terminate an injunction is made or resisted in bad faith or (c) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.

SOURCES: Laws, 1990, ch. 442, § 5, eff from and after July 1, 1990.

§ 75-26-11. Protection of trade secrets during action.

In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

SOURCES: Laws, 1990, ch. 442, § 6, eff from and after July 1, 1990.

Cross References — Public access to records, generally, see § 25-61-11.

§ 75-26-13. Statute of limitations.

An action for misappropriation must be brought within three (3) years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

SOURCES: Laws, 1990, ch. 442, § 7, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. Claims time-barred.

Plaintiff employer's business tort and trade secret claims against defendant competitor, based on the employer's former employee, in violation of a non compete agreement, selling to his former customers, were time-barred under Miss. Code Ann. §§ 15-1-49, 75-26-13, because § 15-1-49(2)'s discovery rule did not toll the limitations period since the employer's representative testified that learning competing sellers' identities was not difficult. State Indus. Prods. Corp. v. Beta Tech. Inc., 575 F.3d 450 (5th Cir. 2009).

§ 75-26-15. Application of provisions to other laws, actions or proceedings.

(1) Except as provided in subsection (2), this chapter displaces conflicting tort, restitutionary and other law of this state providing civil remedies for misappropriation of a trade secret.

(2) This chapter does not affect:

(a) Contractual remedies, whether or not based upon misappropriation of a trade secret;

(b) Other civil remedies that are not based upon misappropriation of a trade secret; or

(c) Criminal remedies, whether or not based upon misappropriation of a trade secret.

SOURCES: Laws, 1990, ch. 442, § 8, eff from and after July 1, 1990.

Cross References — Solid waste disposal, application, see § 17-17-27.
Surface coal mining and reclamation, application, see § 53-9-41.
Economic poisons, application of provisions, see § 69-23-5.
Commercial feed law, application of provisions, see § 75-45-191.
Commercial and proprietary information, generally, see § 79-23-1.

JUDICIAL DECISIONS

1. Preemption.

Former employer's conclusory charge that a former employee converted "confidential" or "proprietary" information, without any accompanying allegation to suggest that such information was of a non-trade secret nature, was insufficient to state a cognizable claim for relief. New South Equip. Mats, Llc v. Keener, 989 F. Supp. 2d 522 (S.D. Miss. Nov. 5, 2013).

To the extent that a former employee's claim was for conversion of information that was properly classified as trade secrets, the claim was preempted by the Mississippi Uniform Trade Secrets Act because its claim for conversion of trade secrets was premised on the same facts as its claim for misappropriation of trade secrets. New South Equip. Mats, Llc v. Keener, 989 F. Supp. 2d 522 (S.D. Miss. Nov. 5, 2013).

The plaintiff's claims for relief other than misappropriation of trade secrets, i.e., unfair competition, intentional interference with a business relationship, intentional interference with a lawful trade, and intentional interference with a business interest, were not preempted or displaced by the Mississippi Uniform Trade Secrets Act since each of the claims could stand alone and withstand summary judgment even without proof that a stolen customer list was a trade secret. Fred's Stores, Inc. v. M & H Drugs, Inc., 725 So. 2d 902 (Miss. 1998).

§ 75-26-17. Construction of provisions.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SOURCES: Laws, 1990, ch. 442, § 9, eff from and after July 1, 1990.

§ 75-26-19. Severability provisions.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SOURCES: Laws, 1990, ch. 442, § 10, eff from and after July 1, 1990.

CHAPTER 27

Weights and Measures

Article 1. Weights and Measures Law of 1964 75-27-1
Article 3. Weights and Measures of Particular Commodities 75-27-101
Article 5. Sale of Livestock by Weight 75-27-201
Article 7. Bonded Weighmaster's Law 75-27-301

ARTICLE 1.

WEIGHTS AND MEASURES LAW OF 1964.

SEC.
75-27-1. Citation.
75-27-3. Meaning of terms.
75-27-5. Systems of weights and measures.
75-27-7. Definitions of special units of measure.
75-27-9. State standards of weight and measure.
75-27-11. Office and working standards and equipment.
75-27-13. State director, deputy director, and inspectors of weights and measures.
75-27-15. Bonds of deputy director and inspectors.
75-27-17. General powers and duties of director.
75-27-19. Specific powers and duties of directors; regulations.
75-27-21. Testing of standards at state-supported institutions.
75-27-23. General testing.
75-27-25. Investigations.
75-27-27. Inspections of packages.
75-27-29. Stop-use, stop-removal, and removal orders.
75-27-31. Disposition of correct and incorrect apparatus.
75-27-33. Police powers; right to entry and stoppage.
75-27-35. Powers and duties of deputy director and inspector.
75-27-37. Duty of owners of incorrect apparatus.
75-27-39. Methods of sale of commodities; general.
75-27-41. Methods of sale of commodities; packages, declaration of quantity and origin; variations and exemptions.
75-27-43. Methods of sale of commodities; declaration of unit price on random packages.
75-27-45. Methods of sale of commodities; misleading packages.
75-27-47. Methods of sale of commodities; advertising packages for sale.
75-27-49. Sale by net weight.
75-27-51. Misrepresentation of price.
75-27-53. Construction of contracts.
75-27-55. Hindering or obstructing officer; penalties.
75-27-57. Impersonation of officer; penalties.
75-27-59. Offenses and penalties.
75-27-61. Injunction.
75-27-63. Presumptive evidence.
75-27-65. Validity of prosecutions.
75-27-67. Licensing service repairmen.

§ 75-27-1. Citation.

This article may be cited as the "Weights and Measures Law of 1964."

SOURCES: Codes, 1942, § 5132-36; Laws, 1964, ch. 221, § 36, eff from and after July 1, 1964.

Cross References — Weights and measures of particular commodities, see § 75-27-101 et seq.

Sale of livestock by weight, see § 75-27-201 et seq.

Licensing of bonded weighmasters, see § 75-27-301 et seq.

Application of the Weights and Measures Law of 1964 to commercial fertilizers, see § 75-47-29.

Weights and measures in regard to gasoline and petroleum products, see §§ 75-55-19, 75-55-33.

Application of the Weights and Measures Law of 1964 to pulpwood scaling and practices, see § 75-79-7.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures § 1 et seq.

CJS. 94 C.J.S., Weights and Measures §§ 1-7.

§ 75-27-3. Meaning of terms.

When used in this article:

(1) The word "person" means both the plural and singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.

(2) The words "weight(s) and (or) measure(s)" means all weights and measures of every kind, all instruments and devices and all electronic systems that employ a laser bar code reader to retrieve product identity, price and other information stored in computer memory, for weighing and measuring, or in the computing of any basic charge or payment for products bought or services rendered on the basis of weight or measure or count and any appliances and accessories associated with such instruments and devices, except that the term does not include meters for the measurement of electricity, gas, or water when the meters are operated in a public utility system, or production from oil and gas wells under the supervision of the State Oil and Gas Board. Such electricity, gas, and water meters are hereby specifically excluded from this article, and none of the provisions of this article shall apply to such meters or to any appliances or accessories associated with them.

(3) The words "sell" and "sale" means barter and exchange.

(4) The term "director" and "deputy director" means, respectively, the State Director of Weights and Measures, who shall be the Commissioner of Agriculture and Commerce, and the Deputy State Director of Weights and Measures, who shall serve as the administrator.

(5) The term "inspector" means a state inspector of weights and measures.

(6) The term "intrastate commerce" means any and all commerce or trade that is begun, carried on, and completed wholly within the limits of the State of Mississippi, and the phrase "introduced into intrastate commerce"

shall be construed to define the time and place at which the first sale and delivery of a commodity is made within the state, and delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(7) The term "commodity in package form" means commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of an auxiliary shipping container enclosing packages that individually conform to the requirements of this article. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be construed to be commodity in package form.

(8) The term "Handbook 44" means the National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices."

SOURCES: Codes, 1942, § 5132-01; Laws, 1964, ch. 221, § 1; Laws, 2000, ch. 326, § 1, eff from and after July 1, 2000.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures § 1.

CJS. 94 C.J.S., Weights and Measures §§ 1-7.

§ 75-27-5. Systems of weights and measures.

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and one or the other of these systems shall be used for all commercial purposes in the State of Mississippi. The definitions of basic units of weights and measures, the tables of weight and measure, and weights and measures equivalents, as published by the National Bureau of Standards, are recognized and shall govern weighing and measuring equipment and transactions in the state.

SOURCES: Codes, 1942, § 5132-02; Laws, 1964, ch. 221, § 2, eff from and after July 1, 1964.

Cross References — Standards of measure for taking seafood, see § 49-15-15.
Construction of contracts, see § 75-27-53.

JUDICIAL DECISIONS

1. In general.

A defendant was improperly convicted of possession of more than one ounce of marijuana where the marijuana in his possession weighed 29.8 grams which, although more than the avoirdupois ounce of 28.3 grams, was less than the troy or apothecaries ounce of 31.1 grams; if the legislature had intended for the avoirdupois ounce to be used, it would have distinguished the avoirdupois ounce from the troy or apothecaries ounce as specified in the National Bureau of Standards Handbook which provides that the word "avoirdupois" or the abbreviation "avdp" be used to specify that unit of weight. Horton v. State, 408 So. 2d 1197 (Miss. 1982).

The imposition of a sentence of five years for possession of phencyclidine, a Schedule I drug, was excessive under § 41-29-139 which provides for a sentence not exceeding three years for possession of a controlled substance classified as a Schedule I or II drug. Horton v. State, 408 So. 2d 1197 (Miss. 1982).

§ 75-27-7. Definitions of special units of measure.

The term "barrel" shall mean a unit of thirty-one (31) gallons. However, the term "barrel," when used in reference to seafood or parts thereof, shall be the measure defined by ordinance of the Mississippi Commission on Marine Resources under authority of Sections 49-15-1 through 49-15-67, Mississippi Code of 1972. The term "ton" shall mean a unit of two thousand (2,000) pounds avoirdupois weight. The term "cord" shall mean the amount that is contained in a space of one hundred twenty-eight (128) cubic feet when such is ranked and well stowed.

SOURCES: Codes, 1942, § 5132-03; Laws, 1964, ch. 221, § 3; Laws, 2000, ch. 516, § 131, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Sale of pulpwood, see § 75-27-39.
Construction of contracts, see § 75-27-53.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 75-27-9. State standards of weight and measure.

Such weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by the state for use as state standards shall, when the same shall have been certified as being satisfactory for use as such by the National Bureau of Standards, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory of the state division of weights and measures, they shall not be removed from the said office or laboratory except for repairs or for certification, and they shall be submitted at least once in ten (10) years to the National Bureau of Standards for certification. The state standards shall be used only in verifying the office standards and for scientific purposes.

SOURCES: Codes, 1942, § 5132-04; Laws, 1964, ch. 221, § 4, eff from and after July 1, 1964.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures § 28 et seq.

CJS. 94 C.J.S., Weights and Measures § 8-12.

§ 75-27-11. Office and working standards and equipment.

In addition to the state standards provided for in Section 75-27-9, there shall be supplied by the state at least one (1) complete set of copies of these to be kept in the office or laboratory of the state division of weights and measures and to be known as "office standards," and also such "field standards" and such equipment as may be found necessary to carry out the provisions of this article. The office standards and field standards shall be verified upon their initial receipt and at least once each year thereafter, the office standards by direct comparison with the state standards and the field standards by comparison with the office standards.

SOURCES: Codes, 1942, § 5132-05; Laws, 1964, ch. 221, § 5, eff from and after July 1, 1964.

§ 75-27-13. State director, deputy director, and inspectors of weights and measures.

The commissioner of the department of agriculture and commerce shall be, ex officio, the director. There shall be a deputy state director of weights and measures and state inspectors of weights and measures, and necessary technical and clerical personnel, who shall be appointed by the director under the rules of said department, and who shall collectively comprise the state division of weights and measures, of which the deputy director shall be the administrator. The director shall be allowed salaries for the deputy director, the inspectors, and the necessary technical and clerical employees, for necessary equipment and supplies, and for traveling and contingent expenses, such sums as shall be appropriated by the legislature.

SOURCES: Codes, 1942, § 5132-06; Laws, 1964, ch. 221, § 6, eff from and after July 1, 1964.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures §§ 10-12.

§ 75-27-15. Bonds of deputy director and inspectors.

A bond, with sureties, to be approved by the secretary of state, and conditioned upon the faithful performance of his duties and the safekeeping of any standards or equipment entrusted to his care shall, forthwith, upon his appointment, be given by the deputy director in the penal sum of five thousand dollars ($5,000.00), and by each inspector in the penal sum of one thousand dollars ($1,000.00). The premiums on such bonds shall be paid by the state.

SOURCES: Codes, 1942, § 5132-07; Laws, 1964, ch. 221, § 7, eff from and after July 1, 1964.

Cross References — General duties of secretary of state, see § 7-3-5.

§ 75-27-17. General powers and duties of director.

The director shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by this article, and shall keep accurate records of the same. The director shall enforce the provisions of this article. He shall have and keep a general supervision over the instruments for weighing and measuring offered for sale, sold, or in use in the state. He shall, annually, make to the governor, secretary of the senate and the clerk of the house of representatives, a report on all of the activities of his office.

SOURCES: Codes, 1942, § 5132-08; Laws, 1964, ch. 221, § 8; Laws, 1970, ch. 261, § 1, eff from and after July 1, 1970.

Cross References — Powers and duties of deputy director and inspectors, see § 75-27-35.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures §§ 10-12.

§ 75-27-19. Specific powers and duties of directors; regulations.

The director may adopt, amend or repeal regulations for the enforcement of this article, which regulations shall have the force and effect of law. These regulations may include (1) standards of net weight, measure or count, and reasonable standards of fill, for any commodity in package form, (2) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by inspectors of weights and measures in the discharge of their official duties, and (3) exemptions from the sealing or marking requirements of Section 75-27-31 with respect to weights and measures of such character or size that such sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question. These regulations shall include specifications, tolerances and regulations for weights and measures of the character of those specified in Section 75-27-23, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (1) that are not accurate, (2) that are of such construction that they are faulty — that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly, or (3) that facilitate the perpetration of fraud. The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology and published in Handbook 44 and supplements thereto, or in any publication revising or superseding Handbook 44, shall be the specifications, tolerances, and regulations for commercial weighing and measuring devices of the State of Mississippi, except insofar as specifically modified, amended or rejected by a regulation issued by the director. For the purposes of this article, apparatus shall be deemed to be "correct" when it conforms to all applicable requirements promulgated as specified in this section; other apparatus shall be deemed to be "incorrect." The division shall levy no charges or fees for the field tests or inspections made under this article; however, the director shall adopt a schedule of fees for calibration and testing services provided by the State Metrology Laboratory. Fees collected for such calibration and testing shall be deposited in the State Treasury in the special fund for the Department of Agriculture and Commerce. The director shall require persons installing scales with a weight capacity of ten thousand (10,000) pounds or more to secure a permit for each such scale installed, establish a fee not to exceed Fifty Dollars ($50.00) for such permit and require such person to supply the director with scale and scale foundation blueprints and specifications for each installation before installation of the scale. Applications for permit shall be made on forms prescribed and furnished by the director. The director shall establish and adopt scale pit and approach specifications for scales with a capacity of ten thousand (10,000) pounds or more. However, weighing devices with a capacity of ten thousand (10,000) pounds or more used to weigh road construction materials shall be exempt from the requirements of this article. Such weighing devices for road construction materials shall have a tolerance of one-half of one percent (½ of 1%) in lieu of the requirements of Handbook 44 and shall be regulated by the Mississippi Department of Transportation instead of the Department of Agriculture and Commerce. For purposes of this section, the term "road construction materials" shall include, but not be limited to, sand, gravel, asphalt, fill dirt, topsoil and concrete. The term "road construction materials" shall not include timber or timber products.

SOURCES: Codes, 1942, § 5132-09; Laws, 1964, ch. 221, § 9; Laws, 1997, ch. 520, § 1; Laws, 2000, ch. 326, § 2; Laws, 2004, ch. 518, § 3, eff from and after July 1, 2005.

Cross References — Application of this section to type of weighing device suitable for weighing of farm-raised catfish, see § 69-7-701.

Powers and duties of deputy director and inspectors, see § 75-27-35.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures §§ 10-12.

§ 75-27-21. Testing of standards at state-supported institutions.

The director shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which monies are appropriated by the legislature, reporting his findings, in writing, to the supervisory board and to the executive officer of the institution concerned.

SOURCES: Codes, 1942, § 5132-10; Laws, 1964, ch. 221, § 10, eff from and after July 1, 1964.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures § 17.

§ 75-27-23. General testing.

When not otherwise provided by law, the director shall have the power to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale or purchase. It shall be the duty of the director within a twelve-month period, or less frequently if in accordance with a schedule issued by him, and as much oftener as he may deem necessary to inspect and test, to ascertain if they are correct, all weights and measures commercially used (1) in determining the weight, measurement or count of commodities or things sold or purchased, or offered or exposed for sale or purchase, on the basis of weight, measure, or of count, or (2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count. Provided, that with respect to single-service devices — that is, devices designed to be used commercially only once and to be then discarded — and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of such devices; and the lots of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples.

The manufacturer or distributor of any weighing device(s) offered for sale, sold, installed for commercial use or used commercially in this state shall subject such device to type evaluation testing by the National Type Evaluation Program (NTEP), National Institute of Standards and Technology (NIST). Any weighing device not covered by a certificate of conformance from such agency shall not be used commercially in this state.

SOURCES: Codes, 1942, § 5132-11; Laws, 1964, ch. 221, § 11; Laws, 1997, ch. 520, § 2, eff from and after July 1, 1997.

Cross References — Municipal testing of water, gas, and electric meters, see § 21-27-9.

Penalties for violations, see § 75-27-59.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures § 17.

§ 75-27-25. Investigations.

The director shall investigate complaints made to him concerning violations of the provisions of this article, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this article and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

SOURCES: Codes, 1942, § 5132-12; Laws, 1964, ch. 221, § 12, eff from and after July 1, 1964.

§ 75-27-27. Inspections of packages.

The director shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether the same contain the amounts represented and whether they be kept, offered, or exposed for sale, or sold, in accordance with law; and when such packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the director may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the director may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot. No person shall (1) sell or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements, or (2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner except with the specific approval of the director.

SOURCES: Codes, 1942, § 5132-13; Laws, 1964, ch. 221, § 13, eff from and after July 1, 1964.

Cross References — Local food inspectors, see § 75-29-101 et seq.
Check of weighing of commercial fertilizers, see § 75-47-29.

§ 75-27-29. Stop-use, stop-removal, and removal orders.

The director shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of his enforcement of the provisions of this article he deems it necessary or expedient to issue such orders, and no person shall use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under the authority of this section. However, the director must give a five-day written notice to the affected person, business or corporation before issuing a stop-use order on any weighing device with a weight capacity of ten thousand (10,000) pounds or greater.

SOURCES: Codes, 1942, § 5132-14; Laws, 1964, ch. 221, § 14; Laws, 1997, ch. 520, § 3, eff from and after July 1, 1997.

§ 75-27-31. Disposition of correct and incorrect apparatus.

The director shall approve for use and seal or mark with appropriate devices such weights and measures as he finds upon inspection and test to be "correct" as defined in Section 75-27-19, and shall reject and mark or tag as "rejected" such weights and measures as he finds, upon inspection or test, to be "incorrect" as defined in Section 75-27-19, but such sealing or marking shall not be required with respect to such weights and measures as may be exempted therefrom by a regulation of the director issued under the authority of Section 75-27-19.

SOURCES: Codes, 1942, § 5132-15; Laws, 1964, ch. 221, § 15, eff from and after July 1, 1964.

Cross References — Metering requirements for gasoline, see § 27-55-35.
Meters in connection with allowable oil and gas production, see § 53-3-9.
Penalties for violations, see § 75-27-59.
Cotton weighers, see § 75-41-3.
Labeling of receptacles for paint, varnish, etc., see § 75-53-5.

§ 75-27-33. Police powers; right to entry and stoppage.

With respect to the enforcement of this article and any other laws dealing with weights and measures that he is, or may be, empowered to enforce, the director is hereby vested with police powers, such as given to sheriffs and constables, and may seize for use as evidence, with warrant, incorrect or unsealed weights and measures or amounts or packages of commodity found to be used, retained, offered, or exposed for sale, or sold, in violation of law.

SOURCES: Codes, 1942, § 5132-16; Laws, 1964, ch. 221, § 16, eff from and after July 1, 1964.

§ 75-27-35. Powers and duties of deputy director and inspector.

The powers and duties given to and imposed upon the director by Sections 75-27-21 through 75-27-33, and 75-27-61, of this article are hereby given to and imposed upon the deputy director and inspectors also, when acting under the instructions and at the direction of the director.

SOURCES: Codes, 1942, § 5132-17; Laws, 1964, ch. 221, § 17, eff from and after July 1, 1964.

§ 75-27-37. Duty of owners of incorrect apparatus.

Weights and measures that have been rejected shall not again be used commercially after a thirty-day waiting period or until they have been officially reexamined and found to be correct or until specific written permission for such use is issued by the rejecting authority.

SOURCES: Codes, 1942, § 5132-18; Laws, 1964, ch. 221, § 18, eff from and after July 1, 1964.

§ 75-27-39. Methods of sale of commodities; general.

Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this article, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count. Provided, that liquid commodities may be sold by weight, and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold. Pulpwood shall be sold either by volume or weight, and measured by the cord or the ton as defined in Section 75-27-7. Purchasers of pulpwood, in determining payment to seller, may convert from weight to volume or volume to weight. Such purchasers shall make the conversion by using the following weights per cord: five thousand two hundred (5,200) pounds for pine, five thousand four hundred (5,400) pounds for soft hardwood, five thousand six hundred (5,600) pounds for mixed hardwood, and five thousand eight hundred (5,800) pounds for hard hardwood.

The provisions of this section shall not apply (1) to insect damaged, dead or otherwise damaged pulpwood, (2) to commodities when sold for immediate consumption on the premises where sold, (3) to vegetables when sold by the head or bunch, (4) to commodities in containers standardized by a law of this state or by federal law, (5) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner, (6) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, (7) to unprocessed vegetable and animal fertilizer when sold by cubic measure, or (8) to timber when sold in bulk on the stump. The director may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

SOURCES: Codes, 1942, § 5132-19; Laws, 1964, ch. 221, § 19; Laws, 1974, ch. 392, § 1; Laws, 1978, ch. 485, § 1; Laws, 1983, ch. 312, eff from and after passage (approved February 24, 1983).

Cross References — Construction of sales contracts, see § 75-27-53.
Penalties for violations, see § 75-27-59.
Weights and measures of particular commodities, see § 75-27-101 et seq.
Sale of livestock by weight, see § 75-27-201 et seq.
Instruments for gauging liquid foods, see § 75-29-109.
Commercial fertilizers, see § 75-47-29.
Gasoline and petroleum products, see §§ 75-55-19, 75-55-23, 75-55-33.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures § 13 et seq.

CJS. 94 C.J.S., Weights and Measures §§ 8, 10, 11, 16, 21-24.

§ 75-27-41. Methods of sale of commodities; packages, declaration of quantity and origin; variations and exemptions.

Except as otherwise provided in this article, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package a definite, plain, and conspicuous declaration of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, (2) the net quantity of the contents in terms of weight, measure, or count, and (3) in the case of any package kept, offered, or exposed for sale, or sold any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor. Provided, that in connection with the declaration required under clause (2), neither the qualifying term "when packed" or any words of similar import shall be used. Provided further, that under clause (2) the director shall, by regulation, establish (a) reasonable variations to be allowed, which shall include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

SOURCES: Codes, 1942, § 5132-20; Laws, 1964, ch. 221, § 20, eff from and after July 1, 1964.

Cross References — Declarations of unit price, see § 75-27-43.

§ 75-27-43. Methods of sale of commodities; declaration of unit price on random packages.

In addition to the declarations required by Section 75-27-41, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

SOURCES: Codes, 1942, § 5132-21; Laws, 1964, ch. 221, § 21, eff from and after July 1, 1964.

§ 75-27-45. Methods of sale of commodities; misleading packages.

No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled, as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the director.

SOURCES: Codes, 1942, § 5132-22; Laws, 1964, ch. 221, § 22, eff from and after July 1, 1964.

§ 75-27-47. Methods of sale of commodities; advertising packages for sale.

Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package. Provided, that in connection with the declaration required under this section there shall be declared neither the qualifying term “when packed” nor any other words of similar import, nor any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of commodity in the package.

SOURCES: Codes, 1942, § 5132-23; Laws, 1964, ch. 221, § 23, eff from and after July 1, 1964.

§ 75-27-49. Sale by net weight.

The word “weight” as used in this article in connection with any commodity shall mean net weight. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed. Provided, however, this shall not apply to bales of cotton which are customarily sold by gross weight.

SOURCES: Codes, 1942, § 5132-24; Laws, 1964, ch. 221, § 24, eff from and after July 1, 1964.

§ 75-27-51. Misrepresentation of price.

Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half (½) the height and width of the numerals representing the whole cent; provided, however, the provisions of this section shall not apply to signs and requirements enumerated in Section 75-55-9, Mississippi Code of 1972. A person who is found guilty of the misrepresentation of the price of a commodity or the representation of a price in any manner calculated or tending to mislead or deceive an actual or prospective purchaser shall be assessed a civil penalty by the director or his designee in the amount of not less than One Hundred Dollars ($100.00) for the first offense and not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) for each subsequent offense. Each violation shall constitute a separate offense. The commissioner or his designee shall afford the person an opportunity for a hearing to show cause why the penalty should not be assessed.

SOURCES: Codes, 1942, § 5132-25; Laws, 1964, ch. 221, § 25; Laws, 2000, ch. 326, § 3, eff from and after July 1, 2000.

Cross References — Display of prices of gasoline and other motor fuel, see § 75-55-9.

§ 75-27-53. Construction of contracts.

Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in Sections 75-27-5 and 75-27-7, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

SOURCES: Codes, 1942, § 5132-26; Laws, 1964, ch. 221, § 26, eff from and after July 1, 1964.

§ 75-27-55. Hindering or obstructing officer; penalties.

Any person who shall wilfully hinder or obstruct in any way the director, the deputy director, or any one of the inspectors, in the performance of his official duties shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00), or by imprisonment for not more than three (3) months, or by both such fine and imprisonment.

SOURCES: Codes, 1942, § 5132-27; Laws, 1964, ch. 221, § 27, eff from and after July 1, 1964.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-27-57. Impersonation of officer; penalties.

Any person who shall impersonate in any way the director, the deputy director, or any one of the inspectors, by the use of his seal or a counterfeit of his seal, or in any other manner, shall be guilty of a misdemeanor, and, upon conviction, may be punished by a fine of not less than Two Hundred Dollars ($200.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

SOURCES: Codes, 1942, § 5132-28; Laws, 1964, ch. 221, § 28; Laws, 1997, ch. 520, § 4, eff from and after July 1, 1997.

Cross References — False personation, see § 97-7-43.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-27-59. Offenses and penalties.

(1) Any person who by himself, by his agent, or as the agent of another person, commits any one (1) of the acts enumerated in paragraphs (a) through (j) of this subsection is guilty of a misdemeanor and, upon a first conviction thereof, shall be punished by a fine of not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00), or by imprisonment for not more than three (3) months, or by both such fine and imprisonment; and upon a second or subsequent conviction, he shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. It is unlawful for a person to:

(a) Use or have in possession for the purpose of using for any commercial purpose specified in Section 75-27-23, sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect weight or measure of any device or instrument used to or calculated to falsify any weight or measure.

(b) Use or have in possession for the purpose of current use for any commercial purpose specified in Section 75-27-23, a weight or measure that does not bear a seal or mark such as is specified in Section 75-27-31, unless such weight or measure has been exempted from testing by the provisions of Section 75-27-23, or by a regulation of the director issued under the authority of Section 75-27-19.

(c) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.

(d) Remove from any weight or measure, contrary to law or regulation, any tag, seal, or mark placed thereon by the appropriate authority.

(e) Sell, or offer or expose for sale, less than the quantity he represents of any commodity, thing, or service.

(f) Take more than the quantity he represents of any commodity, thing, or service, when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.

(g) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell, any commodity, thing, or service in a condition or manner contrary to law or regulation.

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer.

(i) Buy or sell pulpwood by any means other than those prescribed in Section 75-27-39.

(j) Violate any provision of this article or of the regulations promulgated under the provisions of this article for which a specific penalty has not been prescribed.

(2) Any person who by himself, by his agent, or as the agent of another person, commits any of the acts enumerated in subsection (1) of this section may be assessed by the director, or his designee, an administrative penalty of:

(a) Not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for a first violation;

(b) Not less than One Hundred Dollars ($100.00) nor more than Two Thousand Dollars ($2,000.00) for a second violation committed within twelve (12) months of the first violation; and

(c) Not less than One Thousand Dollars ($1,000.00) nor more than Three Thousand Dollars ($3,000.00) for a third violation committed within eighteen (18) months from the date of the first violation.

(3) Any person, subject to an administrative penalty, shall have a right to request an administrative hearing within thirty (30) days of receipt of the notice of the penalty. The director, or his designee, is authorized to conduct the hearing after giving appropriate notice to the respondent. The decision of the director, or his designee, shall be subject to appropriate judicial review.

(4)(a) If the respondent has exhausted his administrative appeals and the civil penalty has been upheld, he shall pay the civil penalty within thirty (30) days of the effective date of the final decision. If the respondent fails to pay the penalty, a civil action may be brought by the director in any court of competent jurisdiction.

(b) Any civil penalty collected under this section shall be transmitted to the General Fund.

SOURCES: Codes, 1942, § 5132-29; Laws, 1964, ch. 221, § 29; Laws, 1974, ch. 392, § 2; Laws, 2013, ch. 446, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in this section. The subsection designations for (1)(h) through (k) were redesignated as (1)(g) through (j). Also, a reference to paragraph (k) in subsection (1) was changed to (j). The Joint Committee ratified the correction at its August 1, 2013, meeting

Cross References — Provisions relating to methods of sale of pulpwood and timber, see § 75-27-39.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures § 40 et seq.

CJS. 94 C.J.S., Weights and Measures §§ 28-43.

§ 75-27-61. Injunction.

The director is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this article.

SOURCES: Codes, 1942, § 5132-30; Laws, 1964, ch. 221, § 30, eff from and after July 1, 1964.

Cross References — Injunctions, generally, see § 11-13-1.

§ 75-27-63. Presumptive evidence.

For the purposes of this article, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which it is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weight or measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, enclosure, stand, or vehicle.

SOURCES: Codes, 1942, § 5132-31; Laws, 1964, ch. 221, § 31, eff from and after July 1, 1964.

§ 75-27-65. Validity of prosecutions.

Prosecutions for violation of any provision of this article are declared to be valid and proper notwithstanding the existence of any other valid general or specific law of this state dealing with matters that may be the same as or similar to those covered by this article.

SOURCES: Codes, 1942, § 5132-32; Laws, 1964, ch. 221, § 32, eff from and after July 1, 1964.

§ 75-27-67. Licensing service repairmen.

Any person engaging in the business of scale repairing or testing shall obtain a license annually from the State Director of Weights and Measures upon showing that he is qualified to repair or test scales and that he meets all requirements of the National Institute of Standards and Technology Handbook 44 and supplements thereto or in any publication revising or superseding Handbook 44. The annual cost of such license shall be One Hundred Dollars ($100.00) for scale service-repair companies and Fifty Dollars ($50.00) for scale service repairmen, which shall be collected by the director and paid into the State Treasury, and shall expire on the thirtieth day of June next after its issuance. The director is hereby authorized to revoke any such license for a violation of any of the provisions of this article or any rule or regulation promulgated thereunder. Any person so licensed shall, within three (3) days after he adjusts, repairs, services, restores to service or places in service any scale, make a report thereof to the Director of Weights and Measures on a form provided by the Department of Agriculture and Commerce.

All such fees collected shall be paid into the General Fund in the State Treasury.

It shall be unlawful and a misdemeanor: (1) for any person other than the owner, or his regular employees, to repair any weighing or measuring device unless he holds the above-prescribed license; or (2) for any person to retain any remuneration for repairing any weighing or measuring device unless the repairing involved causes such device to meet the requirements of the article for at least ninety (90) days after such repairing; or (3) for any person to violate any of the provisions of this section.

SOURCES: Codes, 1942, § 5132-33; Laws, 1964, ch. 221, § 33; Laws, 1970, ch. 255, § 8; Laws, 1997, ch. 520, § 5, eff from and after July 1, 1997.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev) Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.

ARTICLE 3.

WEIGHTS AND MEASURES OF PARTICULAR COMMODITIES.

SEC.
75-27-101. Schedule of weights and measures of particular commodities.

75-27-103. Penalty for using short weights or measures.
75-27-105. Underweight barrels of flour, meal, pork and beef forfeited.
75-27-107. Containers for wheat and corn flours, corn meal, hominy, and grits.
75-27-109. Fixing the standard weight of coal sold by ton, box or barrel.
75-27-111. Measure of charcoal.
75-27-113. Measure of timber.
75-27-114. How natural gas motor fuels are measured when sold.

§ 75-27-101. Schedule of weights and measures of particular commodities.

The standards of the weights and measures of this state as given below shall be deposited with the secretary of state and also at the different state institutions of learning, and the secretary of state and the proctors of those institutions are authorized to confirm and seal all weights and measures brought to them, and to receive the fees therefor. And on all sales by weight of the agricultural products hereinafter named the number of pounds per bushel or the number of pounds per gallon as stated in the following schedule shall be the true and legal standard weight, viz.:

Barley, per bushel	60 pounds
Bluegrass seed, per bushel	14 pounds
Bran, per bushel	20 pounds
Buckwheat, per bushel	48 pounds
Castor beans, per bushel	46 pounds
Clover seed, per bushel	60 pounds
Corn, in the ear	72 pounds
Corn, shelled, per bushel	56 pounds
Corn meal, per bushel	48 pounds
Corn meal, bolted, per bushel	44 pounds
Corn meal, unbolted, per bushel	48 pounds
Cottonseed, per bushel	32 pounds
Dried apples, per bushel	26 pounds
Dried peaches, per bushel	33 pounds
Flaxseed, per bushel	56 pounds
Flour, in barrels, per barrel	196 pounds net
Flour, in half barrels	98 pounds net
Flour, in one-fourth barrel sacks	48 pounds net
Flour, in one-eighth barrel sacks	24 pounds net
Ground peas, per bushel	24 pounds
Hempseed, per bushel	44 pounds
Hungarian grass seed, per bushel	50 pounds
Irish potatoes, per bushel	60 pounds
Lime, unslacked, per bushel	80 pounds
Louisiana cane molasses, per gallon	11 pounds
Malt, per bushel	38 pounds
Meal, in barrels	200 pounds net
Millet seed, per bushel	50 pounds

Oats, per bushel	32 pounds
Onions, per bushel	57 pounds
Peas, per bushel	60 pounds
Rye, per bushel	56 pounds
Salt, per bushel	50 pounds
Sorghum, per gallon	11 pounds
Sorghum seed, per bushel	42 pounds
Stone coal, per bushel	80 pounds
Sweet potatoes, per bushel	54 pounds
Timothy seed, per bushel	45 pounds
Turnips, per bushel	55 pounds
Wheat, per bushel	60 pounds
White beans, per bushel	60 pounds

SOURCES: Codes, 1892, § 4477; 1906, § 5065; Hemingway's 1917, § 3346; 1930, § 7355; 1942, § 5132; Laws, 1914, ch. 134.

Cross References — Establishment of grades and standards of farm products, see § 69-1-19.

Enforcement of regulations with respect to out-of-state grain crops, see § 69-1-25.

Sale of livestock by weight, see §§ 75-27-201 et seq.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures §§ 1 et seq.

CJS. 94 C.J.S., Weights and Measures §§ 1-7 et seq.

§ 75-27-103. Penalty for using short weights or measures.

It is hereby made a misdemeanor for any person or corporation to sell or buy any of the foregoing commodities on short weights in violation of the above schedule of rates and any such person or corporation upon conviction shall be punished by a fine of not less than Five Dollars ($5.00) nor more than Fifty Dollars ($50.00).

SOURCES: Codes, Hemingway's 1917, § 3347; 1930, § 7362; 1942, § 5139; Laws, 1914, ch. 134.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation made a stylistic correction by substituting "not less than Five Dollars ($5.00) nor more than Fifty Dollars ($50.00)" for "not less than five nor more than fifty dollars." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures § 41.

CJS. 94 C.J.S., Weights and Measures §§ 28-32.

§ 75-27-105. Underweight barrels of flour, meal, pork and beef forfeited.

If any person shall sell, keep, or offer for sale, any barrel of flour, meal, pork, or beef, as a barrel thereof, containing less than the standard weight net, he shall forfeit to the county all of such underweight flour, meal, pork, or beef which he may have in his possession.

SOURCES: Codes, Hutchinson's 1848, ch. 13, art. 4(4); 1857, ch. 25, art. 4; 1871, § 2273; 1880, § 949; 1892, § 2106; 1906, § 2291; Hemingway's 1917, § 4663; 1930, § 4971; 1942, § 7121.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 58.
79 Am. Jur. 2d, Weights and Measures § 41.

§ 75-27-107. Containers for wheat and corn flours, corn meal, hominy, and grits.

(1) It shall be unlawful for any person, partnership, corporation, company, cooperative society, or organization to pack for sale, sell, offer or expose for sale in this state any of the following commodities except in containers of net avoirdupois weights of two (2), five (5), ten (10), twenty-five (25), fifty (50), and one hundred (100) pounds, and multiples of one hundred (100) pounds; wheat flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meals, hominy and hominy grits; provided, however, that the provisions of this section shall not apply to (a) the retailing of flours, meals, hominy and hominy grits direct to the consumer from bulk stock, or (b) the sale of flours and meals to commercial bakers or blenders or for export in containers of more than one hundred (100) pounds, or (c) flours, meals, hominy and hominy grits packed in cartons the net contents of which are less than five (5) pounds, or (d) the exchange of wheat for flour by mills grinding for toll. Provided that this section shall not apply to stock on hand at time of enactment.

(2) Any violation of this section shall constitute a misdemeanor and upon conviction, the offender shall be fined not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00) for each offense.

SOURCES: Codes, 1942, § 5132.5; Laws, 1950, ch. 192, §§ 1, 2.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures §§ 14, 40 et seq.

§ 75-27-109. Fixing the standard weight of coal sold by ton, box or barrel.

The standard weight of coal shall and is hereby established at two thousand (2,000) pounds to the ton, or two hundred (200) pounds to the box or barrel, and unless otherwise agreed upon, coal shall be sold by the ton of two thousand (2,000) pounds, or the box or barrel of two hundred (200) pounds.

SOURCES: Hemingway's 1917, § 3353; 1930, § 7356; 1942, § 5133; Laws, 1908, ch. 206.

§ 75-27-111. Measure of charcoal.

Unless otherwise agreed upon, charcoal shall be sold by measure, and the measure of charcoal shall be a barrel of the capacity of three and one-quarter (3-¼) bushels.

SOURCES: Codes, 1892, § 4484; 1906, § 5071; Hemingway's 1917, § 3354; 1930, § 7357; 1942, § 5134.

§ 75-27-113. Measure of timber.

(1) Timber purchased by weight or measured volume shall be purchased by weight on the basis of tonnage or pounds with one (1) ton equaling two thousand (2,000) pounds avoirdupois weight, or by measured volume so long as the measured volume is not calculated by weight but is derived from any of the standards provided in subsection (2).

(2) When timber is purchased by measured volume, the timber shall be measured by either cubic feet, Doyle Log Rule, International ¼ Inch Rule or Scribner Decimal C Rule.

(3) No person, firm or corporation, shall use any scales or measuring device in the purchase of timber unless the same is true and accurate. All devices used for buying or selling timber shall comply with specifications and tolerances and other requirements of this chapter, and regulations adopted pursuant thereto.

(4) Purchaser specifications shall be made available to the haulers and timber owners and shall be posted in a place easily accessible to the haulers or timber owners at the location where the timber is weighed or measured. Scale tickets shall be made available to the haulers and timber owners for each load before the close of the following business day and shall include the measured volume or weight, the standard of weight or measurement used, and the basis and amount of any deductions.

(5)(a) The State Director of Weights and Measures, the Deputy Director of Weights and Measures and any state inspector of weights and measures are hereby vested with police powers, such as given to sheriff and constables, for the sole purpose of issuing citations, without warrant, to any person who the Director, Deputy Director or inspector has probable cause to believe is violating this section, or who shall impede, hinder or otherwise prevent or attempt to prevent the testing of scales or measuring devices or enforcement of this chapter. The citation shall be returnable to the Deputy Director of Weights and Measures. No citation for a violation of this section shall be issued after one (1) year from the date of the violation.

(b) The Deputy Director of Weights and Measures, or his designee, shall within thirty (30) days of the issuance of the citation, dismiss the citation, issue a written warning or levy a fine of not more than Two Hundred Dollars ($200.00) for the first offense; not more than Five Hundred Dollars ($500.00) for the second offense if the second offense occurs within six (6) months of the first offense; or not more than Two Thousand Dollars ($2,000.00) for the third and subsequent offenses, if the third or subsequent offenses occur within six (6) months of the first offense. If the Deputy Director of Weights and Measures, or his designee, determines the violation was unintentional and due to an act of God or was beyond the reasonable control of the person, firm or corporation committing the violation, no fine shall be levied. A person, firm or corporation operating any scales or measuring devices in the purchase of timber at more than one (1) location in the state shall not be subject to fines for second or subsequent offenses unless the offenses occur at the same location on separate days. A citation shall record each and every violation of this section but for the purposes of determining second and subsequent offenses under this section, all violations of this section committed by one (1) person, firm or corporation at one (1) location during one (1) day shall constitute one (1) offense.

(c) Any person, firm or corporation may appeal a fine to the State Director of Weights and Measures or his designee. The appeal must be filed within thirty (30) days after the levy of the fine. Any party aggrieved by the final order of the State Director of Weights and Measures, or his designee, may appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing an appeal within thirty (30) days of a final order of the Director of Weights and Measures. If no appeal is taken and the fine is not paid within sixty (60) days of the order or if the fine is upheld on appeal and no further appeal is taken and the fine is not paid within sixty (60) days of the ruling on the appeal, the Director of Weights and Measures may forward an abstract of the order or judgment to the circuit clerk of any county in the State of Mississippi for enrolling as any other judgment. After enrolling the judgment, the Director of Weights and Measures may institute an action to recover the fines assessed under this section in the name of the State of Mississippi in any court of competent jurisdiction or otherwise proceed as a judgment creditor pursuant to the laws of the State of Mississippi.

(6) This section does not apply to pulpwood as defined in Section 75-79-5 of the Mississippi Uniform Pulpwood Scaling and Practices Act.

SOURCES: Codes, 1880, § 593; 1892, § 4485; 1906, § 5072; Hemingway's 1917, § 3355; 1930, § 7358; 1942, § 5135; Laws, 1996, ch. 515, § 1, eff from and after July 1, 1996.

Cross References — Tax on severed timber and timber products, see §§ 27-25-1 et seq.

ATTORNEY GENERAL OPINIONS

While this section has preempted the field of setting standards for timber weights and measures, the Department of Agriculture and Commerce may enact regulations implementing this statute, but may not contradict it. Ross, October 25, 1995, A.G. Op. #95-0582.

Under the plain language of this section, the use of any other rule other than "Scribner's Lumber and Log-book by Doyle's Rule" is unlawful. Ross, October 25, 1995, A.G. Op. #95-0582.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 75-27-114. How natural gas motor fuels are measured when sold.

Notwithstanding any provision within this chapter to the contrary, natural gas motor fuels shall be sold as follows:

(a) Liquefied natural gas motor fuel shall be sold in diesel gallon equivalents defined as 6.06 pounds of liquefied natural gas; provided, however, that if the National Conference of Weights and Measures establishes a different definition of diesel gallon equivalent, such definition shall be used.

(b) Compressed natural gas motor fuel shall be sold in gasoline gallon equivalents. A gasoline gallon equivalent of CNG shall be defined as 5.660 pounds; provided, however, that if the National Conference on Weights and Measures establishes a different definition of gasoline gallon equivalent, such definition shall be used.

SOURCES: Laws, 2015, ch. 311, § 1, eff from and after July 1, 2015.

ARTICLE 5.

SALE OF LIVESTOCK BY WEIGHT.

SEC.	
75-27-201.	Unlawful to sell or purchase livestock by weight except where weighed by licensed or registered weigher; exceptions.
75-27-203.	Commissioner of agriculture and commerce to administer article; rules and regulations.
75-27-205.	State standards of weights and measures.
75-27-207.	Sealing or making of weighing device; condemned scales.
75-27-209.	Permit required; fee; renewal; limit; bond; report.
75-27-211.	Inspection of equipment; checking animals; permits and fees; cost of administration; testing equipment on request; seal of approval.
75-27-213.	Weigher, defined; bond.
75-27-215.	Licensing of auctioneers; auctioneer not to buy cattle.

75-27-217. Location of scales; equipment.
75-27-219. Schedule of charges to be posted.
75-27-221. Fine or imprisonment for violation of article.
75-27-223. Initial testing to be made before prosecution.

§ 75-27-201. Unlawful to sell or purchase livestock by weight except where weighed by licensed or registered weigher; exceptions.

If shall be unlawful for any person, firm or corporation or an agent thereof, or person acting therefor, to be engaged in whole or in part:

(a) In the business of operating a packing house where livestock is purchased by weight, or

(b) In the business of selling livestock by auction, or otherwise, for others by weight, or

(c) In the business of selling livestock by weight on a commission basis, fee or for other compensation, or

(d) To thus sell, buy, dispose of, trade, offer for sale, or cause or permit to be sold, disposed of or offered for sale, any livestock, by weight, unless such animals are first weighed by a licensed and bonded weigher, or a weigher registered under the Federal Packers and Stockyards Act of 1921, as amended, on a scale, or other weighing device, tested and approved by the state commissioner of agriculture and commerce. Each separate location where any of the businesses heretofore described are carried on shall be considered a separate business within the meaning of the provisions of this article even though all of such separate operations are owned by and under the control of the same person, firm or corporation. Provided, however, this article does not apply to bona fide farmers who trade livestock between themselves or who make purchases or sales. Provided, further that this article shall not apply to cold storage plants, pork processing, or local community slaughterers of livestock for retail. It shall be the responsibility of the owner or operator of such business to see that all scales and equipment used are maintained in good and accurate condition.

SOURCES: Codes, 1942, § 5145.5-01; Laws, 1956, ch. 138, § 1; Laws, 1958, ch. 154, § 1; Laws, 1962, ch. 172, § 1, eff from and after passage (approved June 1, 1962).

Cross References — Livestock regulations, generally, see § 69-13-1 et seq.

Federal Aspects — Federal Packers and Stockyards Act of 1921, see 7 USCS § 181 et seq.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures § 19 et seq.

CJS. 94 C.J.S., Weights and Measures § 1-7 et seq.

§ 75-27-203. Commissioner of agriculture and commerce to administer article; rules and regulations.

The commissioner of agriculture and commerce of Mississippi and his duly appointed agents shall administer the provisions of this article. The commissioner shall have authority to promulgate, from time to time, such rules and regulations as are necessary for the enforcement of the provisions of this article. The commissioner shall prescribe by regulations the tolerance which will be recognized in the reweighing of animals.

SOURCES: Codes, 1942, § 5145.5-02; Laws, 1956, ch. 138, § 2, eff from and after July 1, 1956.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures §§ 10-12.

§ 75-27-205. State standards of weights and measures.

The weights and measures received from the United States under joint resolutions of Congress approved June 14, 1836, and July 27, 1866, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such weights and measures in conformity therewith as shall be supplied by the state shall, when the same shall have been certified by the national bureau of standards, be the state standards of weights and measures for the purpose of this article.

SOURCES: Codes, 1942, § 5145.5-03; Laws, 1956, ch. 138, § 3, eff from and after July 1, 1956.

Cross References — State standards of weights and measures, see § 75-27-9.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures § 28 et seq.

§ 75-27-207. Sealing or making of weighing device; condemned scales.

Whenever the commissioner of agriculture and commerce finds that a weighing device corresponds with the standards in his possession, he shall seal or mark such weighing device with an appropriate label or tag. He shall mark "condemned-not to be used" on incorrect weighing devices, or devices which do not meet the requirements of this article. The owner or user of such latter named devices shall not again use such devices unless, and until, same have been repaired or changed by such owner or user and have been approved by the commissioner of agriculture and commerce or authorized agent and sealed and marked as provided above. Provided, however, no scales shall be condemned where minor adjustments will bring such scales in conformity.

SOURCES: Codes, 1942, § 5145.5-04; Laws, 1956, ch. 138, § 4, eff from and after July 1, 1956.

§ 75-27-209. Permit required; fee; renewal; limit; bond; report.

(1) No person, firm or corporation covered by the provisions of Section 75-27-201 shall engage in the sale or purchase of livestock, by weight, without first having secured a permit, issued by the commissioner of agriculture and commerce, for a fee not to exceed one hundred fifty dollars ($150.00), provided, however, in operating a packing house, only one (1) permit shall be required for any firm, corporation or other such place of business, though a number of persons may be employed in the packing house, whose duties may include or be limited to the weighing of cattle, except that each separate location where any livestock is purchased or processed shall be considered to be a separate business. Permits shall be issued or renewed annually, beginning July 1, 1958, and may be revoked by the issuing office for good cause shown. Initial permits issued after the month of July for any person covered by the provisions of Section 75-27-201, the charge shall be at the rate of one-twelfth (1/12) of the stipulated fee for each remaining month in the fiscal year. Permits issued under the provisions of this article shall not be transferable and shall apply to only the particular yard, sales barn, meat packer, commission merchant or other particular persons covered by this article; and an additional permit must be obtained for each additional such business. Each person covered by the provisions of Section 75-27-201 shall execute and maintain a surety bond payable to the State of Mississippi with securities to be approved by the Secretary of State for the faithful performance of their functions under this article and said bond may be put in suit by any damaged party. Provided, however, any such person may elect to maintain, in whole or partial substitution for such surety bond, one or more irrevocable letters of credit, surety bonds or trust fund agreements, or combination thereof. The total amount of the letter(s) of credit, surety bond(s) or trust fund agreement(s) or combination thereof, shall not be less than the total required amount of the surety bond. All bonds, letters of credit or trust fund agreements shall in matter of form, content, and calculated coverage meet the requirements of the Code of Federal Regulations Title 9, Part 201, Packers and Stockyards Administration General Bonding Regulations or as such regulations may be amended. In no case shall the amount of bond coverage be less than ten thousand dollars ($10,000.00). In the event of default by persons covered by this article the commissioner of agriculture and commerce may, at his discretion, be named as trustee for the dispersal of moneys calculated to be due and payable to individuals injured by such default as determined by the Packers and Stockyards Administration. In the event a buyer under the terms of this article has more than one (1) employee engaged in the weighing of livestock, a single bond covering all

persons weighing livestock shall be deemed sufficient for the purposes of this article. However, the aggregate liability of the surety for all such suits shall, in no event, exceed the sum of said bond. Any person who has met the requirements of federal law by posting a similar bond, letter of credit or trust fund agreement and filing a copy of such instrument with the commissioner of agriculture and commerce shall be exempt from the above bond requirement of making a State of Mississippi bond for the protection of the public. All surety bonds, letters of credit or trust fund agreements shall be filed with the commissioner of agriculture and commerce. Instruments thus filed shall be construed to cover the sale or purchase of livestock at any place of business defined in Section 75-27-201 and it shall be immaterial that the actual purchase or sale was made at some place other than or away from the place of business of seller or purchaser if the purchase or sale was made in the name of such a person as is defined in Section 75-27-201, and the bond shall be construed to cover the issuance of checks in payment for livestock where the maker or payer or endorser, making the same, uses his business name to describe a place of business covered by Section 75-27-201 and the check is not paid for any reason and is due and payable.

(2) Each livestock sales barn, auction sales barn, meat packer, commission merchant, or other similar business, defined in Section 75-27-201, shall make a monthly report at the end of each month to the commissioner of agriculture and commerce showing the number of livestock sold or bought by species.

SOURCES: Codes, 1942, § 5145.5-05; Laws, 1956, ch. 138, § 5; Laws, 1958, ch. 154, § 2; Laws, 1962, ch. 172, § 2; Laws, 1984, ch. 335, eff from and after July 1, 1984.

ATTORNEY GENERAL OPINIONS

Persons engaged in buying or selling of livestock by weight do not fall within scope of Section 75-27-209 as long as transaction is based on results of weights obtained within reasonable period of time prior to transaction by weighing livestock on approved scales. Ross, Sept. 4, 1992, A.G. Op. #92-0654.

§ 75-27-211. Inspection of equipment; checking animals; permits and fees; cost of administration; testing equipment on request; seal of approval.

It shall be the duty of the commissioner of agriculture and commerce, either by himself or his duly authorized agents, to inspect, examine and test any and all equipment used by such livestock sales establishments, and to check the weights of animals sold at such time, and place, and in such manner as he may deem proper and necessary to carry out the intent of this article. The said commissioner shall also issue such permits and collect such fees as are herein provided. All monies collected under this article shall be paid into the general fund in the state treasury.

Provided further, the commissioner is hereby authorized, upon written request, to test the scales, or other weighing devices, of any person in this state desiring such tests, and if the commissioner finds such scales, or other weighing devices to be accurate, within the approved tolerances, he may place his seal of approval thereon. The commissioner shall charge for such services a sum sufficient to defray the expenses thereof, and no part of such cost shall be paid from other funds of said commissioner. A strict accounting of all sums received for such testing and approval shall be made.

SOURCES: Codes, 1942, § 5145.5-06; Laws, 1956, ch. 138, § 6; Laws, 1958, ch. 154, § 3; Laws, 1960, ch. 157; Laws, 1970, ch. 255, § 9, eff from and after July 1, 1970.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures § 17.

§ 75-27-213. Weigher, defined; bond.

The person who is responsible for the weighing and recording of weights of animals sold at such barns shall be known as a weigher. Each weigher, or any person so designated by the owner or weigher, shall be bonded in the penal sum of one thousand dollars ($1,000.00) with sureties to be approved by the secretary of state for the faithful performance of the duties of his office.

SOURCES: Codes, 1942, § 5145.5-07; Laws, 1956, ch. 138, § 7, eff from and after July 1, 1956.

§ 75-27-215. Licensing of auctioneers; auctioneer not to buy cattle.

All auctioneers shall be licensed by the payment of a fee of twenty-five dollars ($25.00) per year and no auctioneer shall be permitted to buy cattle in his name during the period while actually engaged in auctioneering.

SOURCES: Codes, 1942, § 5145.5-08; Laws, 1956, ch. 138, § 8, eff from and after July 1, 1956.

§ 75-27-217. Location of scales; equipment.

All scales used in the weighing of livestock at public auction shall be so located and operated that they will at all times be conveniently accessible. Provided, further, that scales shall be equipped with weight indicator to provide exact duplicate of weight on each animal weighed.

SOURCES: Codes, 1942, § 5145.5-09; Laws, 1956, ch. 138, § 9, eff from and after July 1, 1956.

§ 75-27-219. Schedule of charges to be posted.

Each barn shall be required to post in a conspicuous place, printed in large type letters and numbers, not less than 36 point type, a complete schedule of charges to be made on the handling of all types of sales.

This schedule shall remain permanently posted.

SOURCES: Codes, 1942, § 5145.5-10; Laws, 1956, ch. 138, § 10, eff from and after July 1, 1956.

§ 75-27-221. Fine or imprisonment for violation of article.

Any person, firm, corporation, association, or co-operative violating any of the provisions of this article or any of the rules and regulations promulgated hereunder shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one hundred dollars ($100.00), or by imprisonment of not more than three (3) months, or by both such fine and imprisonment. If the commissioner of agriculture and commerce shall find, upon examination or test, that any person, firm or corporation has violated any of the provisions of this article or rules or regulations hereunder, he or his duly authorized agent or agents may institute proceedings in a court of competent jurisdiction to have such person, firm, corporation, association, or co-operative convicted therefor, or the said commissioner may, in his discretion, report the results of such inspection to the district attorney or county attorney having jurisdiction, together with such other evidence of said violation as he shall deem necessary, and any certificate of such inspection or test, properly certified by affidavit shall be competent evidence in any court of this state. It shall be the duty of said district attorney or county prosecuting attorney to institute proceedings at once against the person, or persons, firms, corporations, associations, or co-operatives charged with such violations.

SOURCES: Codes, 1942, § 5145.5-11; Laws, 1956, ch. 138, § 11, eff from and after July 1, 1956.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 79 Am. Jur. 2d, Weights and Measures §§ 40 et seq.

§ 75-27-223. Initial testing to be made before prosecution.

No prosecutions shall be commenced under this article for violations of Sections 75-27-201 and 75-27-203 hereof until the initial testing of scales has been made or sought to be made by the commissioner of agriculture and commerce or his representatives.

SOURCES: Codes, 1942, § 5145.5-12; Laws, 1956, ch. 138, § 12, eff from and after July 1, 1956.

ARTICLE 7.

BONDED WEIGHMASTER'S LAW.

SEC.

75-27-301. Short title.
75-27-303. Definitions.
75-27-305. Qualifications for license as bonded weighmaster; records of applications and licenses.
75-27-307. Licensing provisions; fees; compensation of bonded weighmaster.
75-27-309. Oath of bonded weighmaster.
75-27-311. Seal; penalty for improper use.
75-27-313. Surety bond.
75-27-315. Form of weight or measurement certificate; completion of form; false weight or measurement certificate.
75-27-317. Use of weighing or measuring device.
75-27-319. Powers and duties of state commissioner of agriculture and commerce.
75-27-321. Improper use of title of licensed weighmaster, etc.; suspension or revocation of license; falsification of weight or measurement certificate; penalties.
75-27-323. Penalties for violations; injunctive relief.
75-27-325. Supplemental nature of this article; effect of conflict with other laws.

§ 75-27-301. Short title.

This article shall be cited as the "Bonded Weighmaster's Law."

SOURCES: Laws, 1982, ch. 430, § 1, eff from and after July 1, 1982.

§ 75-27-303. Definitions.

For the purposes of this article, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(1) "Bonded weighmaster" shall mean any person engaged in the business of public weighing who shall weigh or measure any property, commodity, produce or article and issue therefor a weight certificate which shall be accepted as the true and accurate weight or measure upon which the property, commodity, produce or article is offered for sale or sold and shall be licensed by the Commissioner of Agriculture and Commerce of the State of Mississippi for such office.

(2) "Public weighing" shall mean the performance of the service of weighing or measuring and the issuing of an official certificate of weight or measure for such service for any person, upon request or otherwise, with or without compensation, of property, commodity, produce or article other than such property, commodity, produce or article being bought or sold by a bonded weigher or his or her employer.

(3) "Person" shall mean any individual, company, cooperative, partnership, corporation, firm or association.

(4) "Weighing or measuring device" shall mean any lawful device used for the weighing or measuring of any property, commodity, produce or article.

(5) "Commissioner" shall mean the Commissioner of Agriculture and Commerce of the State of Mississippi.

SOURCES: Laws, 1982, ch. 430, § 2, eff from and after July 1, 1982.

§ 75-27-305. Qualifications for license as bonded weighmaster; records of applications and licenses.

(1) A citizen of the United States or a person who has declared his intention of becoming such a citizen, who is a resident of the State of Mississippi, not less than twenty-one (21) years of age, of good moral character, who has the ability to weigh accurately and to make correct weight certificates, and who has received from the commissioner a license as a bonded weighmaster, shall be styled and authorized to act as a bonded weighmaster.

(2) The commissioner may adopt rules and regulations for determining the qualifications of the applicant for license as a bonded weighmaster. The commissioner may pass upon the qualifications of the applicant upon the basis of the information supplied in the application, may examine such applicant orally or in writing, or both, for the purpose of determining his or her qualifications. The commissioner shall grant licenses to such applicants as may be found to possess the qualifications required herein. The commissioner shall keep a record of all such applications and of all licenses issued thereon.

SOURCES: Laws, 1982, ch. 430, § 3, eff from and after July 1, 1982.

Cross References — Definitions applicable to this section, see § 75-27-303.

General powers and duties of the state commissioner of agriculture and commerce, see § 75-27-319.

ATTORNEY GENERAL OPINIONS

Section 75-27-305(1) controls over Section 75-27-303(3), therefore only an individual, or human being, and not a corporation, may be licensed as a bonded weighmaster in this state. Spell, September 6, 1996, A.G. Op. #96-0561.

Statutory provisions authorizing an individual who is a United States citizen, a Mississippi resident, 21 years of age and of good moral character to be licensed as a bonded weighmaster do not prohibit the licensing of a corporation, partnership or other business entity as a bonded weighmaster. Spell, July 18, 1997, A.G. Op. #97-0358.

§ 75-27-307. Licensing provisions; fees; compensation of bonded weighmaster.

(1) Any person, as defined by Section 75-27-303(3), or business before engaging in business as a public weighmaster shall obtain a license from the commissioner. Applications for such license shall be made on forms prescribed and furnished by the commissioner. Licenses issued hereunder by the commissioner shall expire on June 30 of each year and application for renewal thereof

shall be made annually, before the expiration date. The fee for such license and all subsequent renewals for an individual who is not employed by a business shall be Twenty-five Dollars ($25.00). The fee for such license and all subsequent renewals for a business is One Hundred Dollars ($100.00), and such license shall cover all employees of that business. Funds collected from such license fees shall be paid into the State Treasury to the credit of the General Fund.

(2) Licenses issued hereunder shall not be transferable.

(3) Each application for license shall be accompanied by a signed weighmaster's oath, a surety bond as required herein and a statement certifying that the weighing or measuring device used has been tested and declared to be accurate, within tolerances allowed by NBS Handbook 44 for such device, by the state weights and measures jurisdiction.

(4) The issuance of a license as a bonded weighmaster shall not obligate the state to pay to the licensee any compensation for his or her services as a bonded weighmaster.

(5) A bonded weighmaster may not officially weigh or measure any property, commodity, produce or article unless he or she holds a valid license issued by the commissioner.

(6) A bonded weighmaster's license may be revoked by the commissioner for violation of the provisions of this law or regulations promulgated hereunder; provided, however, such bonded weighmaster shall be permitted a hearing prior to the revocation of such license.

(7) The following persons shall not be required, but shall be permitted, to obtain licenses as bonded weighmasters:

(a) A weights and measures officer employed by the Department of Agriculture and Commerce when acting within the scope of his official duties;

(b) A person weighing or measuring property, produce, commodities or articles that he/she or his/her employer, if any, is either buying or selling;

(c) A person weighing or measuring property, produce, commodities or articles in conformity with the requirements of federal statutes or the statutes of this state relative to warehousemen or processors;

(d) Employees of the state or federal government for the performance of their duties under regulations of the Federal Grain Inspection Service (FGIS);

(e) All persons or businesses operating under the jurisdiction of the Interstate Commerce Act.

SOURCES: Laws, 1982, ch. 430, § 4; Laws, 1997, ch. 485, § 1, eff from and after July 1, 1997.

Cross References — Necessity of an oath, see § 75-27-309.

Requirement that a bonded weighmaster furnish a surety bond, see § 75-27-313.

Use of weighing and measuring devices, generally, see § 75-27-317.

Federal Aspects — Interstate Commerce Act, see 49 USCS § 10101 et seq.

ATTORNEY GENERAL OPINIONS

An individual, or a business entity consisting of a company, cooperative, partnership, corporation, firm or association may be licensed as a bonded weighmaster, and all employees of any such business entity may engage in public weighing on behalf of such business, unless prohibited by rules and regulations adopted by the Mississippi Department of Agriculture and Commerce. Spell, July 18, 1997, A.G. Op. #97-0358.

§ 75-27-309. Oath of bonded weighmaster.

Each person, at the time application is made for a bonded weighmaster's license, shall execute an official weighmaster's oath in which he agrees to lawfully and faithfully fulfill the duties and responsibilities of a bonded weighmaster. The weighmaster's oath shall be made a part of each annual renewal of such bonded weighmaster's license. The bonded weighmaster's oath shall be supplied to the applicant by the commissioner.

SOURCES: Laws, 1982, ch. 430, § 5, eff from and after July 1, 1982.

ATTORNEY GENERAL OPINIONS

Only one oath, seal and surety bond are required under this chapter for a business entity licensed as a bonded weighmaster. Spell, July 18, 1997, A.G. Op. #97-0358.

§ 75-27-311. Seal; penalty for improper use.

(1) Each bonded weighmaster shall, at his or her own expense, provide himself or herself with an impression seal. The licensee's name and the word "Mississippi" shall be inscribed around the outer margin of the seal and the words "Bonded Weighmaster" shall be inscribed in the center thereof.

(2) Such seal, or licensee's name and number, shall be impressed or inscribed electronically upon each weight certificate issued by such bonded weighmaster, and such seal or licensee's name and number, when applied to weight certificates, shall be recognized authority of accuracy of weight or measure recorded thereon.

(3) The use of such bonded weighmaster's seal by any person not holding a valid weighmaster's license shall be a misdemeanor and such person shall be punished as provided in this article. If a licensed bonded weighmaster shall allow his or her bonded weighmaster's seal to be used by another person, such bonded weighmaster shall be guilty of a misdemeanor and shall be punished as provided herein and his or her license may be revoked.

SOURCES: Laws, 1982, ch. 430, § 6; Laws, 1997, ch. 485, § 2, eff from and after July 1, 1997.

Cross References — Penalties for violations, generally, see § 75-27-323.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

Only one oath, seal and surety bond are required under this chapter for a business entity licensed as a bonded weighmaster. Spell, July 18, 1997, A.G. Op. #97-0358.

§ 75-27-313. Surety bond.

At the time application is made for a bonded weighmaster's license and before the issuance of such license by the commissioner, applicant shall file with the commissioner a bond in the penal sum of Five Thousand Dollars ($5,000.00) payable to the State of Mississippi with surety to be approved by the Commissioner of Insurance for the faithful performance of the duties of a bonded weighmaster. The bond must be conditioned on the accurate weight or measure of the property, commodity, produce or article recorded on the official weight or measurement certificate issued by the bonded weighmaster and on compliance with all laws and rules governing public weighers. Said bond may be put in suit by any damaged party. However, the aggregate liability of the surety regardless of the number of claims shall not exceed the bond penalty.

Evidence shall be supplied to the commissioner annually, at the time license is renewed, that the bond continues in force and effect. In the event the bond is cancelled or will not be renewed, the bonding company shall notify the commissioner in writing at least thirty (30) days prior to the cancellation of such bond. If a bond is cancelled or fails to be renewed by the bonded weighmaster, the license issued hereunder shall automatically stand void and repealed; provided, however, the license shall not stand void and repealed if a new bond, as required herein, is filed with the commissioner prior to the expiration date of the original bond.

SOURCES: Laws, 1982, ch. 430, § 7; Laws, 2003, ch. 369, § 1, eff from and after July 1, 2003.

ATTORNEY GENERAL OPINIONS

Only one oath, seal and surety bond are required under this chapter for a business entity licensed as a bonded weighmaster. Spell, July 18, 1997, A.G. Op. #97-0358.

§ 75-27-315. Form of weight or measurement certificate; completion of form; false weight or measurement certificate.

(1) The commissioner shall prescribe the form of weight or measurement certificate to be used by all bonded weighmasters in this state.

(2) Such weight or measurement certificate shall include but shall not be limited to the following:

(a) The name of the property, commodity, produce or article.

(b) The declared owner or agent of the owner or the consignee or the agent of the consignee of the property, commodity, produce or article weighed or measured.

(c) The accurate weight or measurement of the property, commodity, produce or article.

(d) The means (vessel, railroad car, truck, etc.) by which the property, commodity, produce or article was being transported at the time it was weighed or measured.

(e) Any trade or other mark of identification thereon and such other information as may be necessary to distinguish or identify the property, commodity, produce or article from a like kind.

(f) A space designated for the bonded weighmaster seal and the statement "My license expires __________________ (Date)."

(g) Signature of the bonded weighmaster who weighed or measured the property, commodity, produce or article recorded on such official weight or measurement certificate.

(h) Such additional information as the commissioner deems necessary for the lawful and accurate recording of weights or measurements.

(3) A licensed bonded weighmaster shall not enter on a weight or measurement certificate issued by him or her any weight or measurement values but such as he or she has personally determined, and shall make no entries on a weight or measurement certificate issued by some other person. A weight or measurement certificate shall be so prepared as to show clearly that weight, weights, measure or measurements were actually determined. If the weight certificate form provides for the entry of gross, tare and net weights, in any case in which only the gross, tare and net weights is determined by the weighmaster, he or she shall strike through or otherwise cancel the printed entries for the weights not determined or computed. If gross and tare weights are shown on a weight certificate and both weights were not determined on the same scale and on the day for which the certificate is dated, the weighmaster shall identify on the certificate the scale used for determining each such weight and the date of each such determination.

(4) Such weight certificate when so made, properly signed and sealed shall be prima facie evidence of the accuracy of such recorded weights or measurements.

(5) Bonded weighmasters shall keep and preserve in an orderly manner, for a period of at least one (1) year, a legible copy of each weight or measurement certificate issued by said licensee, which copies shall be available at all reasonable times for inspection by the commissioner or his representative.

(6) A bonded weighmaster who intentionally or knowingly issues a weight or measurement certificate showing a false weight or measurement for a property, commodity, produce or article shall be guilty of a misdemeanor and shall be punished as provided herein.

SOURCES: Laws, 1982, ch. 430, § 8, eff from and after July 1, 1982.

Cross References — Penalties for violations by a weighmaster, see § 75-27-323.

§ 75-27-317. Use of weighing or measuring device.

(1) When making a weight or measurement determination as provided for by this article, a licensed bonded weighmaster shall use a weighing or measuring device that is of a type suitable for the weighing or measuring of the amount and kind of material to be weighed or measured and that has been tested and approved for use by a weights and measures officer of this state within a period of twelve (12) months immediately preceding the date of the weighing.

(2) A licensed bonded weighmaster shall not use any scale to weigh a load the value of which exceeds the nominal or rated capacity of the scale. When the gross or tare weight of any vehicle or combination of vehicles is to be determined, the weighing shall be performed upon a scale having a platform of sufficient size to accommodate such vehicle or combination of vehicles. Each separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for each such separate unit.

SOURCES: Laws, 1982, ch. 430, § 9, eff from and after July 1, 1982.

§ 75-27-319. Powers and duties of state commissioner of agriculture and commerce.

The Commissioner of Agriculture and Commerce of the State of Mississippi is hereby authorized, empowered and directed to administer and enforce this article and may prescribe, adopt and enforce rules and regulations as may be necessary to carry out the stated intent herein. The commissioner may delegate to one or more persons employed by the department of agriculture and commerce the authority to do and perform any and all of the functions required to be done and performed by the commissioner under this article.

SOURCES: Laws, 1982, ch. 430, § 10, eff from and after July 1, 1982.

§ 75-27-321. Improper use of title of licensed weighmaster, etc.; suspension or revocation of license; falsification of weight or measurement certificate; penalties.

(1) No person shall assume the title of licensed weighmaster, or any title of similar import, perform the duties or acts to be performed by a licensed weighmaster under this article, hold himself or herself out as a licensed weighmaster, issue any weight certificate, ticket, memorandum or statement for which a fee is charged, or engage in the full-time or part-time business of public weighing, unless he or she holds a valid license as a bonded weighmaster.

(2) The commissioner is authorized to suspend or revoke the license of any bonded weighmaster (a) when he is satisfied, after a hearing upon ten (10) days' notice to the licensee, said licensee has violated any provision of this regulation, or (b) when a bonded weighmaster has been convicted in any court of competent jurisdiction of violating any provision of this regulation.

(3) Any person who requests a bonded weighmaster to weigh or measure any property, produce, commodity or article falsely or incorrectly, or who requests a false or incorrect weight or measurement certificate, or any person who issues a weight or measurement certificate simulating the weight or measurement certificate prescribed in this article and who is not a bonded weighmaster, shall be guilty of a misdemeanor.

(4) Any bonded weighmaster who falsifies a weight or measurement certificate, or who delegates his authority to any person not licensed as a bonded weighmaster, or who preseals a weight or measurement certificate with his official seal before performing the act of weighing or measuring, shall be guilty of a misdemeanor.

(5) Any person who violates any provision of this article or any rule or regulation promulgated pursuant thereto for which no specific penalty had been provided shall be guilty of a misdemeanor.

SOURCES: Laws, 1982, ch. 430, § 11, eff from and after July 1, 1982.

Cross References — Penalties for violations, generally, see § 75-27-323.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-27-323. Penalties for violations; injunctive relief.

(1) Any person convicted of violating any of the provisions of this article or who shall impede, hinder or otherwise prevent or attempt to prevent the commissioner or his duly authorized agent in performance of his duty in connection with the provisions of this article shall be adjudged guilty of a misdemeanor and shall upon conviction be punished by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), or by imprisonment for not more than six (6) months, in the discretion of the court.

(2) Nothing in this article shall be construed as requiring the commissioner or his duly appointed agent or representative to report for prosecution or for the institution of legal proceedings as a result of minor violations of this article when he or she believes that the public interest will best be served by a suitable notice of warning in writing.

(3) The commissioner is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule or regulation promulgated and adopted hereunder notwithstanding the existence of other remedies at law. Said injunction shall be issued without bond.

SOURCES: Laws, 1982, ch. 430, § 12, eff from and after July 1, 1982.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-27-325. Supplemental nature of this article; effect of conflict with other laws.

The provisions of this article shall be supplemental to the provisions of Sections 75-27-1 through 75-27-223 and any other laws providing for weights and measures of property; however, if any conflict arises between any provision of this article and such other laws, the provisions of this article shall control.

SOURCES: Laws, 1982, ch. 430, § 13, eff from and after July 1, 1982.

CHAPTER 29

Sale and Inspection of Food and Drugs

Article 1. Adulterated and Misbranded Food 75-29-1
Article 3. Local Regulation and Inspection 75-29-101
Article 5. Syrup Containers 75-29-201
Article 7. Enrichment of Hominy Grits and Corn Meal 75-29-301
Article 9. Enrichment of Flour and Bread 75-29-401
Article 11. Enrichment of Oleomargarine 75-29-501
Article 13. Honey and Honey Products 75-29-601
Article 14. Generic Equivalent Drug Products. [Repealed]
Article 15. Bottled Drinking Water 75-29-801
Article 17. Charitable Donation of Food by Restaurant or Other Food Establishment 75-29-851
Article 19. Regulation of Nutritional Labeling for Food and Consumer Incentive Items 75-29-901
Article 21. Cottage Food Operations 75-29-951

ARTICLE 1.

ADULTERATED AND MISBRANDED FOOD.

SEC.
75-29-1. Legislative findings.
75-29-3. Articles deemed adulterated.
75-29-5. Prohibiting manufacture and sale of adulterated, misbranded or insufficiently labeled foods.
75-29-7. What the term food shall include.
75-29-9. Articles deemed misbranded.
75-29-11. Articles deemed mislabeled or misbranded.
75-29-13 through 75-29-17. Repealed.
75-29-19. State Board of Health charged with enforcement of this chapter.
75-29-21. Analysis of samples and specimens.
75-29-23. State Board of Health to have free access to places where foods are sold.
75-29-25. Interference with State Board of Health subject to penalty.
75-29-27. Handling of adulterated or misbranded food; notice of embargo; court proceedings.
75-29-29. Institution of proceedings to prosecute violations of article.
75-29-31. Written notice or warning for minor violations.

§ 75-29-1. Legislative findings.

The Legislature finds that there is a need for the equal and uniform regulation of all food and food products and for the provision for the sale of such products. This article is intended to authorize the State Board of Health to provide a regulatory framework for the intrastate and interstate sale of food and food products, and to prevent the sale of adulterated or mislabeled food or food products not otherwise regulated by existing law. In the event any provision of this article conflicts with such law, the existing law will control.

SOURCES: Codes, 1892, § 2097; 1906, § 2282; Hemingway's 1917, § 4654; 1930, § 4957; 1942, § 7107; Laws, 1997, ch. 430, § 1, eff from and after July 1, 1997.

Cross References — Drugs, generally, see § 41-29-1 et seq.

Exemption from liability of certain donors of food, see § 95-7-1 et seq.

Criminal offense of adulteration of drugs, see § 97-27-1.

RESEARCH REFERENCES

ALR. Recovery for loss of business resulting from resale of unwholesome food or beverages furnished by another. 17 A.L.R.2d 1379.

Am Jur. 25 Am. Jur. 2d, Drugs and Controlled Substances §§ 1, 2, 4, 5, 7, 8, 18 et seq.

17 Am. Jur. Trials, Drug Products Liability and Malpractice Cases § 1 et seq.

Practice References. Drug Product Liability (Matthew Bender).

§ 75-29-3. Articles deemed adulterated.

An article of food shall be deemed to be adulterated:

If it is adulterated as defined in Section 402 of the federal Food, Drug and Cosmetic Act, as amended, codified at 21 USC 342.

SOURCES: Codes, Hemingway's 1917, § 4667; 1930, § 4958; 1942, § 7108; Laws, 1910, ch. 132; Laws, 1970, ch. 415, § 3; Laws, 1997, ch. 430, § 2, eff from and after July 1, 1997.

Cross References — Meat, meat-food and poultry regulation and inspection, see § 75-33-1 et seq.

Meat inspection law, see § 75-35-1 et seq.

Criminal offenses relating to food, see §§ 97-27-1, 97-27-5, 97-27-15 to 97-27-19.

JUDICIAL DECISIONS

1. In general.

In customer's suit against enterprise for breach of an implied warranty of merchantability and negligence because customer found a roach in his food, nowhere in Miss. Code Ann. § 75-29-3 did it state that a trial judge had to apply the adulterated food laws standard under § 75-29-2, over any other, such as the foregoing standards, that might be applicable. CEF Enters. v. Betts, 838 So. 2d 999 (Miss. Ct. App. 2003).

This section and [former] § 75-29-15 refer to the inspection, sale, manufacture, keeping for sale and preparation for sale of unwholesome meat and poultry as therein described, and these sections have no application to the use for food, by the owner, of meat from healthy cattle, although such animals were accidentally killed. King v. Mississippi Power & Light Co., 244 Miss. 486, 142 So. 2d 222 (1962).

RESEARCH REFERENCES

ALR. Presumption of negligence based on presence of foreign substance in bottled or canned beverage. 52 A.L.R.2d 117.

Presumption of negligence based on presence of foreign substance in food in can or other sealed container. 52 A.L.R.2d 159.

Coloring matter as forbidden adulteration of food. 56 A.L.R.2d 1129.

Am Jur. 35A Am. Jur. 2d, Food §§ 20-22.

8B Am. Jur. Legal Forms 2d, Food § 120:51 (warranty against adulteration or misbranding).

8Am Jur Legal Forms 2d, Food § 120:52 (indemnity of seller against liability for misbranding of goods shipped under buyer's label).

5 Am. Jur. Proof of Facts, Food, Proof No. 1 (foreign substance in food or beverage as cause of illness or injury).

5 Am. Jur. Proof of Facts, Food, Proof No. 2 (food poisoning).

CJS. 36A C.J.S., Food § 21-23.

§ 75-29-5. Prohibiting manufacture and sale of adulterated, misbranded or insufficiently labeled foods.

It shall be unlawful for any person, persons, firm or corporation, within this state, to manufacture for sale, produce for sale, knowingly expose for sale, have in his or their possession for sale, or sell any article of food which is adulterated, misbranded or insufficiently labeled within the meaning of this article; and any person, persons, firm or corporation who shall manufacture for sale, produce for sale, expose for sale, have in his or their possession for sale, or sell any article of food which is adulterated, misbranded or insufficiently labeled within the meaning of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than One Hundred Dollars ($100.00), nor more than Five Hundred Dollars ($500.00), or be imprisoned not to exceed ninety (90) days, or both such fine and imprisonment; provided, however, it shall be lawful to sell any article named herein which complies with all federal statutes regulating or governing the manufacture, sale or labeling of such article.

SOURCES: Codes, Hemingway's 1917, § 4665; 1930, § 4959; 1942, § 7109; Laws, 1910, ch. 132; Laws, 1997, ch. 430, § 3, eff from and after July 1, 1997.

Cross References — Meat, meat-food and poultry regulation and inspection, see § 75-33-1 et seq.

Meat inspection law, see § 75-35-1 et seq.

Criminal offenses relating to food, see §§ 97-27-1, 97-27-5, 97-27-15 to 97-27-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 20-22.

8B Am. Jur. Legal Forms 2d, Food § 120:51 (warranty against adulteration or misbranding).

8 Am. Jur. Legal Forms 2d, Food § 120:52 (indemnity of seller against liability for misbranding of goods shipped under buyer's label).

CJS. 36A C.J.S., Food § 21-23.

§ 75-29-7. What the term food shall include.

The term "food" as used in this article shall include every article used for, or entering into the composition of, or used or intended for use in the preparation of food or drink for human consumption, whether simple, mixed or compound.

SOURCES: Codes, Hemingway's 1917, § 4666; 1930, § 4960; 1942, § 7110; Laws, 1910, ch. 132; Laws, 1997, ch. 430, § 4, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 1, 2.
CJS. 36A C.J.S., Food § 1.

§ 75-29-9. Articles deemed misbranded.

An article shall be deemed to be misbranded:

First. — If it be an imitation of or offered for sale under the name of another article.

Second. — If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package.

Third. — If the package containing it or its label shall bear any statement, design or device regarding the ingredients of the substances contained therein, which statement, design or device shall be false in any particular.

SOURCES: Codes, Hemingway's 1917, § 4668; 1930, § 4961; 1942, § 7111; Laws, 1910, ch. 132; Laws, 1983, ch. 418; Laws, 1989, ch. 312, § 6, eff from and after July 1, 1989.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 23-28.
CJS. 36A C.J.S., Food § 21-23.

§ 75-29-11. Articles deemed mislabeled or misbranded.

An article shall be deemed to be mislabeled or misbranded:

If such article is not in conformity with the requirements for the declaration of net quantity of contents of Section 4 of the Fair Packaging and Labeling Act (15 USCS 1451 et seq.) and the regulations promulgated pursuant thereto, and with the requirements of the Nutrition Labeling and Education Act of 1990.

SOURCES: Codes, Hemingway's 1917, § 4669; 1930, § 4962; 1942, § 7112; Laws, 1910, ch. 132; Laws, 1997, ch. 430, § 5, eff from and after July 1, 1997.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by substituting "Nutrition Labeling and Education Act of 1990" for "Nutritional Labeling and Education Act of 1990." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Federal Aspects — Section 4 of the Fair Packaging and Labeling Act, see 15 USCS § 1453.

Nutrition Labeling and Education Act of 1990, see 21 USCS § 301 note.

RESEARCH REFERENCES

Am Jur. 35 Am. Jur. 2d, Food §§ 23-28.
CJS. 36A C.J.S., Food §§ 38, 39.

§§ 75-29-13 through 75-29-17. Repealed.

Repealed by Laws, 1997, ch. 430, § 13, eff from and after July 1, 1997.

§ 75-29-13. [Codes, Hutchinson's 1848, ch. 13, art. 4(6); 1857, ch. 25, art. 6; 1871, § 2271; 1880, § 947; 1892, § 2105; 1906, § 2290; Hemingway's 1917, § 4662; 1930, § 4970; 1942, § 7120]

§ 75-29-15. [Codes, 1892, § 2107; 1906, § 2292; Hemingway's 1917, § 4664; 1930, § 4972; 1942, § 7122]

§ 75-29-17. [Codes, Hemingway's 1917, § 4670; 1930, § 4973; 1942, § 7123; Laws, 1910, ch. 132]

Editor's Note — Former § 75-29-13 provided for penalties for the sale of unsound provisions.

Former § 79-29-15 provided for the forfeiture of adulterated food and drugs.

Former § 75-29-17 provided for the requirement of the State Chemist to fix and publish standards of purity.

§ 75-29-19. State Board of Health charged with enforcement of this chapter.

The State Board of Health is hereby charged with the enforcement of this chapter. The State Board of Health shall have the authority to establish such rules and regulations not inconsistent with this chapter as will best carry its provisions into effect, unless regulation of food as defined in this chapter is otherwise authorized by law.

SOURCES: Codes, Hemingway's 1917, § 4671; 1930, § 4974; 1942, § 7124; Laws, 1910, ch. 132; Laws, 1997, ch. 430, § 6, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 3, 49, 50, 52 et seq.
CJS. 36A C.J.S., Food § 59 et seq.

§ 75-29-21. Analysis of samples and specimens.

In the discretion of the State Board of Health, samples or specimens for analysis may be taken by duly qualified and sworn inspectors. Whenever practicable, samples shall be taken by representatives of the board. The Office of the State Chemist shall have primary responsibility for providing chemical, physical and microbiological analytical services in support of regulatory programs provided for herein.

SOURCES: Codes, Hemingway's 1917, § 4674; 1930, § 4975; 1942, § 7125; Laws, 1910, ch. 132; Laws, 1997, ch. 430, § 7, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 12.
CJS. 36A C.J.S., Food § 20.

§ 75-29-23. State Board of Health to have free access to places where foods are sold.

Upon showing of identification, representatives of the State Board of Health shall have free access at all reasonable hours to any place where foods are sold, and in calling for and taking a sample of any food, he shall tender the market price asked for it.

SOURCES: Codes, Hemingway's 1917, § 4675; 1930, § 4976; 1942, § 7126; Laws, 1910, ch. 132; Laws, 1997, ch. 430, § 8, eff from and after July 1, 1997.

Cross References — Local inspection and inspectors, see § 75-29-101 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 12.
CJS. 36A C.J.S., Food § 19.

§ 75-29-25. Interference with State Board of Health subject to penalty.

Any person or dealer who shall impede, obstruct, hinder, prevent or attempt to prevent a representative of the State Board of Health in the performance of his duties, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or be imprisoned in the county jail not more than ninety (90) days, at the discretion of the court.

SOURCES: Codes, Hemingway's 1917, § 4676; 1930, § 4977; 1942, § 7127; Laws, 1910, ch. 132; Laws, 1997, ch. 430, § 9, eff from and after July 1, 1997.

Cross References — Penalty for opposing local food inspector, see § 75-29-111.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-29-27. Handling of adulterated or misbranded food; notice of embargo; court proceedings.

(1) Whenever a duly authorized agent of the State Board of Health finds, or has probable cause to believe, that any food, as defined by this article, is adulterated or so misbranded as to be dangerous or fraudulent, within the meaning of this article, he shall affix to such article a tag or other appropriate

marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by an authorized agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission. All costs associated with an embargo or detention of food reasonably believed to be adulterated shall be borne by the owner thereof or his agent.

(2) When an article is adulterated or misbranded, the owner of the article may be proceeded against by petition to the judge of the county or circuit court in whose jurisdiction the article is located, detained or embargoed for a libel for condemnation of such article. When an authorized agent has found that an article which is embargoed or detained is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a sampled, detained or embargoed article is adulterated or misbranded, such article, after entry of the decree, shall be destroyed at the expense of the owner thereof, under the supervision of an agent of the State Board of Health, and all court costs and fees, storage and other proper expenses shall be taxed against the owner of such article or his agent. When the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond, signifying that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the owner thereof or his agent for such labeling or processing under the supervision of an agent of the State Board of Health. The expense of such supervision shall be paid by owner of the article or his agent. The article shall be returned to the owner or his agent and the bond shall be discharged on the representation to the court by the State Board of Health that the article is no longer in violation of this article and that the expenses of such supervision have been paid.

(4) Whenever any authorized agent of the State Board of Health shall find in any room, building, vehicle of transportation or other structure, any perishable food articles that are unsound or contain any filthy, decomposed or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, any agent of the State Board of Health shall immediately condemn or destroy the articles, or in any other manner render the articles unsalable as human food.

SOURCES: Codes, Hemingway's 1917, § 4672; 1930, § 4978; 1942, § 7128; Laws, 1910, ch. 132; Laws, 1997, ch. 430, § 10, eff from and after July 1, 1997.

Cross References — Duty of district attorneys to prosecute, see § 25-31-11.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 66 et seq.

CJS. 36A C.J.S., Food § 49 et seq.

§ 75-29-29. Institution of proceedings to prosecute violations of article.

It shall be the duty of each district attorney, county attorney or city attorney to whom the State Board of Health reports any violation of this article to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this article is reported to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the board, either orally or in writing, in person or by attorney with regard to such contemplated proceeding.

SOURCES: Codes, Hemingway's 1917, § 4673; 1930, § 4979; 1942, § 7129; Laws, 1910, ch. 132; Laws, 1997, ch. 430, § 11, eff from and after July 1, 1997.

Cross References — Duty of district attorneys to prosecute, see § 25-31-11.

JUDICIAL DECISIONS

1. In general.

The surety under a "blanket" public employees performance bond covering the administrator, trustees, librarian, dietitian, superintendent of nurses, and bookkeeper of a county hospital, was not entitled to recover from the administrator any part of a $6,000 shortage which occurred during the administrator's tenure at the hospital, where the administrator had inherited from his predecessor the mode of operation and continued it without objection by the trustees or by the State Auditing Department, and where the State Auditor's report as to the shortage made no attempt to fix responsibility for the shortage. Hartford Accident & Indem. Co. v. Reedy, 233 So. 2d 799 (Miss. 1970).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 66 et seq.

CJS. 36A C.J.S., Food § 49 et seq.

§ 75-29-31. Written notice or warning for minor violations.

Nothing in this article shall be construed as requiring the State Board of Health to report for prosecution or for the institution of proceedings under this article minor violations of this article, whenever the board believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

SOURCES: Laws, 1997, ch. 430, § 12, eff from and after July 1, 1997.

ARTICLE 3.

LOCAL REGULATION AND INSPECTION.

SEC.	
75-29-101.	Inspectors of food appointed.
75-29-103.	Regulations adopted; penalties.
75-29-105.	Oath and bond of inspector.
75-29-107.	Inspectors liable as other officers.
75-29-109.	Instruments for gauging liquids.
75-29-111.	Penalty for opposing the inspector.

§ 75-29-101. Inspectors of food appointed.

The board of supervisors of every county, and the governing authority of every city, town, and village, respectively, may appoint and commission a suitable person to be inspector of food, and said boards may direct, from time to time, what kinds of food shall be inspected.

SOURCES: Codes, Hutchinson's 1848, ch. 13, art. 4(1); 1857, ch. 25, art. 1; 1871, § 2265; 1880, § 942; 1892, § 2098; 1906, § 2283; Hemingway's 1917, § 4655; 1930, § 4963; 1942, § 7113.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 12.

§ 75-29-103. Regulations adopted; penalties.

The said boards may respectively make and publish all needful regulations for the government of the inspectors, and of dealers in food, and may enforce such regulations by proper penalties, and they may prescribe and regulate the compensation of the inspector and his fees and perquisites, and define his duties.

SOURCES: Codes, 1892, § 2099; 1906, § 2284; Hemingway's 1917, § 4656; 1930, § 4964; 1942, § 7114.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 11, 12.

§ 75-29-105. Oath and bond of inspector.

Every inspector of food, before he enters on his duties, shall take and subscribe the following oath, to be attached to his commission: "I, A B, do swear [or affirm] that, as inspector of food for the ______, I will not knowingly or wilfully injure any person, or suffer any injury to be done by others, with my knowledge or consent; and I will, at all times and in all things, well and truly perform all the duties of the inspector of food for the ________ according to law, to the best of my ability, without fear, favor, or partiality. So help me God." He shall give bond, with sufficient sureties, payable to the county, city, town, or village, in the sum of five hundred dollars ($500.00), conditioned for the faithful performance of his duties.

SOURCES: Codes, Hutchinson's 1848, ch. 13, art. 4(2); 1857, ch. 25, art. 2; 1871, § 2266; 1880, § 943; 1892, § 2100; 1906, § 2285; Hemingway's 1917, § 4657; 1930, § 4965; 1942, § 7115.

§ 75-29-107. Inspectors liable as other officers.

Every inspector of food shall be liable, civilly and criminally, as other officers are, for fraud and any malfeasance or misfeasance in office.

SOURCES: Codes, 1892, § 2101; 1906, § 2286; Hemingway's 1917, § 4658; 1930, § 4966; 1942, § 7116.

Cross References — Civil liability of public officers for failure to perform duties, see § 25-1-45.

Criminal liability of public officers for failure to perform duties, see § 97-11-37.

§ 75-29-109. Instruments for gauging liquids.

In case it be necessary or proper, the board of supervisors, or the governing authority of every city, town, and village, shall supply the inspector with all the necessary instruments for gauging and ascertaining the contents of vessels of liquids; and such boards may direct and regulate the inspection, gauging, and marking or branding packages of liquids, and enforce such regulation.

SOURCES: Codes, 1892, § 2103; 1906, § 2288; Hemingway's 1917, § 4660; 1930, § 4968; 1942, § 7118.

Cross References — Weights and measures, generally, see § 75-27-1 et seq.

§ 75-29-111. Penalty for opposing the inspector.

Any person who shall oppose or obstruct any inspector of food in the discharge of his official duties, shall, for every such offense, forfeit and pay two hundred dollars ($200.00), and shall, moreover, be liable for any injury or damage that may be sustained by any such opposition or obstruction.

SOURCES: Codes, Hutchinson's 1848, ch. 13, art. 4(3); 1857, ch. 25, art. 3; 1871, § 2272; 1880, § 948; 1892, § 2104; 1906, § 2289; Hemingway's 1917, § 4661; 1930, § 4969; 1942, § 7119.

Cross References — Penalty for interfering with inspectors or state board of health representatives, generally, see § 75-29-25.

Obstruction of justice, see §§ 97-9-55, 97-9-69, 97-9-71, 97-9-75.

ARTICLE 5.

SYRUP CONTAINERS.

SEC.
75-29-201. Labeling requirements.
75-29-202. Records of names and addresses of manufacturers of syrup.
75-29-203. Enforcement of article.
75-29-205. Stop sales; pick ups and refunds where syrup or syrup products sold in violation of article.
75-29-207. Repealed.
75-29-209. Rules and regulations.
75-29-211. Penalties; appeals of administrative penalties.

§ 75-29-201. Labeling requirements.

(1) Every container of syrup sold, offered, or exposed for sale, through a retail outlet, by an individual, firm or corporation in the State of Mississippi shall have on the outside of each container a paper label, permanent type stamped imprint, or embossed material on the container itself, plainly printed in the English language, and truly certifying the net contents of the packet, the name, brand, and the name and address of the person, or processor, offering such syrup for sale, and a true statement of the contents contained therein.

(2) It shall be unlawful for any individual, firm, organization or corporation to label, sell, offer for sale or expose for sale at the retail level of trade any product as "pure syrup" that does not meet the minimum requirements established by the Mississippi Department of Agriculture and Commerce. Syrup from the juice of sugar cane or sorghum may be labeled "pure cane" or "pure sorghum" syrup to coincide with the contents therein. Any other type of syrup must show the name of all ingredients with ingredients listed in descending order of predominance of weight.

(3) It shall be unlawful for any manufacturer or distributor of syrup or syrup products to use a fictitious name or address on the container label.

SOURCES: Codes, 1942, § 7109.5; Laws, 1960, ch. 159, §§ 1-4; Laws, 1962, ch. 169, §§ 1-7; Laws, 1973, ch. 303, § 1 (a); Laws, 2013, ch. 323, § 1, eff from and after July 1, 2013.

Cross References — Regulation of containers for corn meal, hominy, and grits, see § 75-27-207.

Penalty for violations, see § 75-29-211.

RESEARCH REFERENCES

Am Jur. 35 Am. Jur. 2d, Food §§ 14, 23-28.

8 Am. Jur. Legal Forms 2d, Food, § 120:51 (warranty against adulteration or misbranding).

8 Am. Jur. Legal Forms 2d, Food § 120:52 (indemnity of seller against liability for misbranding of goods shipped under buyer's labels).

CJS. 36A C.J.S., Food § 38, 39.

§ 75-29-202. Records of names and addresses of manufacturers of syrup.

Distributors are required to keep records of the names and addresses of the manufacturers whose syrup they distribute for a period of three (3) years and to provide that information to the commissioner upon request to aid the commissioner in locating the source of adulterated syrup or syrup products.

SOURCES: Laws, 2013, ch. 323, § 5, eff from and after July 1, 2013.

§ 75-29-203. Enforcement of article.

The Mississippi Department of Agriculture and Commerce is hereby vested with the authority and responsibility for carrying out the provisions of this article, and the Commissioner of Agriculture and Commerce, or his representative, shall be furnished samples of syrup or syrup products from the individual, firm organization or corporation, upon request, and shall have the products analyzed by the state chemist.

SOURCES: Codes, 1942, § 7109.5; Laws, 1960, ch. 159, §§ 1-4; Laws, 1962, ch. 169, §§ 1-7; Laws, 2013, ch. 323, § 2, eff from and after July 1, 2013.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 3, 49, 50, 52 et seq.

§ 75-29-205. Stop sales; pick ups and refunds where syrup or syrup products sold in violation of article.

The Commissioner of Agriculture and Commerce is authorized, in his discretion, to issue an order to stop the sale or distribution of any syrup or syrup products found to be in violation of this article. Upon written notice by the commissioner to the manufacturer or distributor of the syrup or syrup products sold in violation of this article, the syrup or syrup products shall be picked up by the manufacturer or distributor and the buyer of the syrup or syrup products shall be refunded the purchase price by the manufacturer or distributor. Any order to stop the sale of syrup or syrup products may be appealed to the Chancery Court of the First Judicial District of Hinds County or the chancery court in the county where the violation occurred within thirty (30) days of receipt of the order.

SOURCES: Codes, 1942, § 7109.5; Laws, 1960, ch. 159, §§ 1-4; Laws, 1962, ch. 169, §§ 1-7; Laws, 1973, ch. 303, § 1 (c); Laws, 2013, ch. 323, § 3, eff from and after July 1, 2013.

§ 75-29-207. Repealed.

Repealed by Laws of 2013, ch. 323, § 6, eff from and after July 1, 2013.

§ 75-29-207. [Codes, 1942, § 7019.5; Laws, 1960, ch. 159, §§ 1-4; Laws, 1962, ch. 169, §§ 1-7.]

Editor's Note — Former § 75-29-207 prohibited the use of a fictitious name or address on a container label. For present similar provisions, see § 75-29-201(3).

§ 75-29-209. Rules and regulations.

The commissioner of agriculture and commerce of the State of Mississippi is hereby authorized and empowered, in his discretion, to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this article.

SOURCES: Codes, 1942, § 7109.5; Laws, 1960, ch. 159, §§ 1-4; Laws, 1962, ch. 169, §§ 1-7.

RESEARCH REFERENCES

Am Jur. 35 Am. Jur. 2d, Food § 6.

§ 75-29-211. Penalties; appeals of administrative penalties.

(1) Except as otherwise provided in subsection (2) of this section, any person violating the provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished for such violation; and each infraction shall constitute a separate offense.

(2) Any manufacturer or distributor found to be in violation of the labeling requirements of Section 75-29-201, shall, upon conviction therefor, be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or imprisoned for a period of time not to exceed ninety (90) days, or both.

(3) Any person who by himself, by his agent, or as the agent of another person, commits a violation of this chapter may be assessed by the commissioner, or his designee, an administrative penalty of:

(a) Not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for a first violation;

(b) Not less than One Hundred Dollars ($100.00) nor more than Two Thousand Dollars ($2,000.00) for a second violation within twelve (12) months of the first violation; and

(c) Not less than One Thousand Dollars ($1,000.00) nor more than Three Thousand Dollars ($3,000.00) for a third violation within eighteen (18) months from the date of the first violation.

(4) Any person subject to an administrative penalty shall have a right to request an administrative hearing within thirty (30) days of receipt of the notice of the penalty. The commissioner, or his designee, shall be authorized to conduct the hearing after giving appropriate notice to the respondent. The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. The decision of the commissioner or his/her designee shall be subject to appropriate judicial review.

(5) If the respondent has exhausted his administrative appeals and the civil penalty has been upheld, he shall pay the civil penalty within thirty (30) days of the effective date of the final decision. If the respondent fails to pay the penalty, a civil action may be brought by the commissioner in any court of competent jurisdiction. Any civil penalty collected under this article shall be transmitted to the General Fund.

(6) In lieu of, or in addition to, the penalties provided, the commissioner shall have the power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of this article and the rules and regulations, in the appropriate circuit, chancery, county or justice court in which venue may lie. The commissioner may obtain mandatory or prohibitory injunctive relief, whether temporary or permanent, and it shall not be necessary for the state to post a bond or prove that no adequate remedy is available at law.

SOURCES: Codes, 1942, § 7109.5; Laws, 1960, ch. 159, §§ 1-4; Laws, 1962, ch. 169, §§ 1-7; Laws, 1980, ch. 322; Laws, 2013, ch. 323, § 4, eff from and after July 1, 2013.

Cross References — Criminal offenses relating to food, see §§ 97-27-1, 97-27-5, 97-27-15 through 97-27-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 53-57.

25 Am. Jur. Pl & Pr Forms (Rev), Weights M & L, Form 12 (complaint, petition or declaration by state to recover penalty for mislabeled products).

8 Am. Jur. Legal Forms 2d, Food § 120:52 (indemnity of seller against liability for misbranding of goods shipped under buyer's labels).

CJS. 36A C.J.S., Food § 59 et seq.

ARTICLE 7.

ENRICHMENT OF HOMINY GRITS AND CORN MEAL.

SEC.
75-29-301 through 75-29-315. Repealed.

§§ 75-29-301 through 75-29-315. Repealed.

Repealed by Laws, 2000, ch. 366, § 1, eff from and after July 1, 2000.

§ 75-29-301. [Codes, 1942, § 7129-01; Laws, 1944, ch. 272, § 1, eff from and after Feb. 1, 1945]

§ 75-29-303. [Codes, 1942, § 7129-02; Laws, 1944, ch. 272, § 2, eff from and after Feb. 1, 1945]

§ 75-29-305. [Codes, 1942, § 7129-03; Laws, 1944, ch. 272, § 3, eff from and after Feb. 1, 1945]

§ 75-29-307. [Codes, 1942, § 7129-04; Laws, 1944, ch. 272, § 4, eff from and after Feb. 1, 1945]

§ 75-29-309. [Codes, 1942, § 7129-05; Laws, 1944, ch. 272, § 5, eff from and after Feb. 1, 1945]

§ 75-29-311. [Codes, 1942, § 7129-06; Laws, 1944, ch. 272, § 6, eff from and after Feb. 1, 1945]

§ 75-29-313. [Codes, 1942, § 7129-07; Laws, 1944, ch. 272, § 7, eff from and after Feb. 1, 1945]

§ 75-29-315. [Codes, 1942, § 7129-08; Laws, 1944, ch. 272, § 8, eff from and after Feb. 1, 1945]

Editor's Note — Former § 75-29-301 contained the short title of the article entitled "Degerminated Corn Meal and Grits Law."

Former § 75-29-303 was entitled "Definitions."

Former § 75-29-305 was entitled "Addition of vitamins and other ingredients."

Former § 75-29-307 was entitled "Addition of vitamins and other ingredients; methods."

Former § 75-29-309 was entitled "Labeling requirements."

Former § 75-29-311 was entitled "Enforcement by state health officer; penalty."

Former § 75-29-313 was entitled "Article not applicable in certain cases."

Former § 75-29-315 was entitled "Shortage of ingredients; procedure when."

ARTICLE 9.

ENRICHMENT OF FLOUR AND BREAD.

SEC.
75-29-401 through 75-29-415. Repealed.

§§ 75-29-401 through 75-29-415. Repealed.

Repealed by Laws, 2000, ch. 366, § 2, eff from and after July 1, 2000.

§ 75-29-401. [Codes, 1942, § 7129-20; Laws, 1944, ch. 274, § 1, eff from and after Feb. 1, 1945]

§ 75-29-403. [Codes, 1942, § 7129-21; Laws, 1944, ch. 274, § 2, eff from and after Feb. 1, 1945]

§ 75-29-405. [Codes, 1942, § 7129-22; Laws, 1944, ch. 274, § 3, eff from and after Feb. 1, 1945]

§ 75-29-407. [Codes, 1942, § 7129-23; Laws, 1944, ch. 274, § 4, eff from and after Feb. 1, 1945]

§ 75-29-409. [Codes, 1942, § 7129-24; Laws, 1944, ch. 274, § 5, eff from and after Feb. 1, 1945]

§ 75-29-411. [Codes, 1942, § 7129-25; Laws, 1944, ch. 274, § 6, eff from and after Feb. 1, 1945]

§ 75-29-413. [Codes, 1942, § 7129-26; Laws, 1944, ch. 274, § 7, eff from and after Feb. 1, 1945]

§ 75-29-415. [Codes, 1942, § 7129-27; Laws, 1944, ch. 274, § 8, eff from and after Feb. 1, 1945]

Editor's Note — Former § 75-29-401 contained the short title of the article entitled "Flour and Bread Enrichment Law."

Former § 75-29-403 was entitled "Definitions."

Former § 75-29-405 was entitled "Flour; vitamins and other ingredients required."

Former § 75-29-407 was entitled "Bread; vitasmins and other ingredients required."

Former § 75-29-409 was entitled "Bread; manner of enrichment."

Former § 75-29-411 was entitled "Labeling."

Former § 75-29-413 was entitled "Enforcement by state board of health; powers and duties."

Former § 75-29-415 was entitled "Penalty for violation."

ARTICLE 11.

ENRICHMENT OF OLEOMARGARINE.

SEC.
75-29-501 through 75-29-511. Repealed.

§§ 75-29-501 through 75-29-511. Repealed.

Repealed by Laws, 2000, ch. 366, § 3, eff from and after July 1, 2000.

§ 75-29-501. [Codes, 1942, § 7129-40; Laws, 1944, ch. 273, § 1, eff from and after Sept. 1, 1944]

§ 75-29-503. [Codes, 1942, § 7129-41; Laws, 1944, ch. 273, § 2, eff from and after Sept. 1, 1944]

§ 75-29-505. [Codes, 1942, § 7129-42; Laws, 1944, ch. 273, § 3, eff from and after Sept. 1, 1944]

§ 75-29-507. [Codes, 1942, § 7129-43; Laws, 1944, ch. 273, § 4, eff from and after Sept. 1, 1944]

§ 75-29-509. [Codes, 1942, § 7129-44; Laws, 1944, ch. 273, § 5, eff from and after Sept. 1, 1944]

§ 75-29-511. [Codes, 1942, § 7129-45; Laws, 1944, ch. 273, § 6, eff from and after Sept. 1, 1944]

Editor's Note — Former § 75-29-501 contained the short title of the article entitled "Oleomargarine Enrichment Law."

Former § 75-29-503 was entitled "Vitamin A; unlawful to sell oleomargarine without."

Former § 75-29-505 was entitled "Specifications for ingredients; changes and additions."

Former § 75-29-507 was entitled "Enforcement by state health officer; penalty for violation."

Former § 75-29-509 was entitled "Shortage of ingredients; procedure when."

Former § 75-29-511 was entitled "Labeling requirements."

ARTICLE 13.

HONEY AND HONEY PRODUCTS.

SEC.	
75-29-601.	Labeling requirements.
75-29-603.	Enforcement of article.
75-29-604.	Hearings; process; appeals; civil penalties; informal administrative review under certain circumstances.
75-29-605.	Criminal penalties.

75-29-607. Records of names and addresses of manufacturers.

§ 75-29-601. Labeling requirements.

(1) Every container of honey or honey products sold, offered or exposed for sale, by an individual, firm, organization or corporation in the State of Mississippi shall have on the outside of each container a paper label, permanent type stamped imprint or embossed material on the container itself, plainly printed in the English language truly certifying the net contents of the container, the name, brand, name and address of the person or processor offering such honey or honey products for sale, and a true statement of the contents contained therein.

(2) It shall be unlawful for any individual, firm, organization or corporation to label and/or sell, offer for sale or expose for sale at the retail level of trade any product as "pure honey" that does not meet the minimum requirements established by the Mississippi Department of Agriculture and Commerce. Artificial honey products not of one hundred percent (100%) pure honey shall be labeled in the English language as "artificial honey," and the word "artificial" shall be as prominently shown as the word "honey," and a list of the ingredients in the products and a percent by weight of each ingredient shall be shown on the label.

(3) It shall be unlawful for any manufacturer or distributor of honey or honey products to use a fictitious name or address on the container label required herein.

SOURCES: Laws, 1978, ch. 353, § 1; Laws, 1980, ch. 320, § 1; Laws, 1990, ch. 460, § 1, eff from and after July 1, 1990.

Cross References — General prohibition on manufacture and sale of adulterated, misbranded or insufficiently labeled foods, see § 75-29-5.

Misbranded articles, generally, see § 75-29-9.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 23-28.

25 Am. Jur. Pl & Pr Forms (Rev), Weights M & L, Form 12 (complaint, petition or declaration by state to recover penalty for mislabeled products).

CJS. 36A C.J.S., Food § (12)9.

§ 75-29-603. Enforcement of article.

(1) The Mississippi Department of Agriculture and Commerce is hereby charged with the responsibility of enforcing this article and the Commissioner of Agriculture and Commerce or his representative shall be furnished samples of honey or honey products from the individual, firm, organization or corporation, upon request, and shall have such products analyzed by the State Chemist.

(2) The Commissioner of Agriculture and Commerce is authorized, in his discretion, to issue an order to stop the sale or distribution of any honey or

honey products found to be in violation of this article. Upon written notice by the commissioner to the manufacturer or distributor of the honey or honey products sold in violation of this article, such honey or honey products shall be picked up by the manufacturer or distributor of such products and the buyer of the honey or honey products sold in violation of this article shall be refunded the purchase price by the manufacturer or distributor.

(3) The Commissioner of Agriculture and Commerce of the State of Mississippi is hereby authorized and empowered, in his discretion, to make and promulgate rules and regulations as may be necessary to carry out the provisions of this article.

SOURCES: Laws, 1978, ch. 353, § 2; Laws, 1990, ch. 460, § 2; Laws, 2008, ch. 450, § 2, eff from and after passage (approved Apr. 8, 2008.)

Cross References — Labeling requirements for honey and honey products, see § 75-29-601 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 3, 49, 50, 52 et seq.

§ 75-29-604. Hearings; process; appeals; civil penalties; informal administrative review under certain circumstances.

(1) When a written complaint is made against a person for violation of this article, or any of the rules or regulations, the commissioner, or his designee, shall conduct a full evidentiary hearing. The complaint shall be in writing and shall be filed in the office of the department. The commissioner shall serve the accused with a copy of the complaint and a summons by any of the methods set forth in Rule 4 of the Mississippi Rules of Civil Procedure or by certified mail. Within thirty (30) days after receipt of the summons and a copy of the complaint, the accused shall file a written answer with the department. Upon receipt of the written answer of the accused, the matter shall be set for hearing before the commissioner within a reasonable time. If the accused fails to file an answer within the thirty (30) days, the commissioner may enter an order by default against the accused. The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. Compliance with the subpoenas may be enforced by any court of general jurisdiction in this state. The testimony of witnesses shall be upon oath or affirmation, and they shall be subject to cross-examination. The proceedings shall be recorded. If the commissioner determines that the complaint lacks merit, he may dismiss same. If he finds that there is substantial evidence showing that a violation has occurred, he may impose any or all of the following penalties upon the accused: (a) levy a civil penalty in the amount of no more than Five Thousand Dollars ($5,000.00) for each violation; (b) issue a stop sale order; (c) require the accused to relabel the honey or honey products that he is offering or exposing for sale which is not labeled in accordance with this article; or (d) seize any lot of honey

or honey products that is not in compliance with this article and destroy, sell or otherwise dispose of the honey and honey products and apply the proceeds of the sale to the costs and civil penalties levied with the balance to be paid to the accused. The decision of the commissioner, or his designee, shall be in writing, and it shall be delivered to the accused by certified mail.

(2) Either the accused or the department may appeal the decision of the commissioner to the circuit court of the county of residence of the accused or, if the accused is a nonresident of the State of Mississippi, to the Circuit Court of the First Judicial District of Hinds County, Mississippi. The appellant shall have the record transcribed and file it with the circuit court. The appeal shall otherwise be governed by all applicable laws and rules affecting appeals to circuit court. If no appeal is perfected within the required time, the decision of the commissioner shall then become final.

(3) The decision of the circuit court may then be appealed by either party to the Mississippi Supreme Court in accordance with the existing law and rules affecting such appeals.

(4) When any violation of this article, or the rules and regulations occurs, or is about to occur, that presents a clear and present danger to the public health, safety or welfare requiring immediate action, any of the department's field inspectors, and any other persons authorized by the commissioner, may issue an order to be effective immediately before notice and a hearing that imposes any or all of the following penalties against the accused: (a) issue a stop sale order; (b) require the accused to relabel any honey or honey products that he is offering or exposing for sale and which is not labeled in accordance with this article; or (c) seize any lot of honey or honey products that is not in compliance with this article and destroy, sell or otherwise dispose of the honey or honey products and apply the proceeds of the sale to the cost and any civil penalties levied with the balance to be paid to the accused. The order shall be served upon the accused in the same manner that the summons and complaint may be served upon him. The accused shall then have thirty (30) days after service of the order upon him within which to request an informal administrative review before the Director of the Bureau of Regulatory Services in the department, or his designee, who shall act as reviewing officer. If the accused makes a timely request, the reviewing officer shall conduct an informal administrative review within ten (10) days after the request is made. If the accused does not request an informal administrative review within the thirty (30) days, then he will be deemed to have waived his right to the review. At the informal administrative review, subpoena power shall not be available, witnesses shall not be sworn nor be subject to cross-examination and there shall be no court reporter or record made of the proceedings. Each party may present its case in the form of documents, oral statements or any other method. The rules of evidence shall not apply. The reviewing officer's decision shall be in writing, and it shall be delivered to the parties by certified mail. If either party is aggrieved by the order of the reviewing officer, he may appeal to the commissioner for a full evidentiary hearing in accordance with the procedures in subsection (1) of this section, except that there shall be no requirement for

a written complaint or answer to be filed by the parties. The appeal shall be perfected by filing a notice of appeal with the commissioner within thirty (30) days after the order of the reviewing officer is served on the appealing party. The hearing before the commissioner, or his designee, shall be held within a reasonable time after the appeal has been perfected. Failure to perfect an appeal within the allotted time shall be deemed a waiver of such right.

(5) The Commissioner may publish the names and addresses of anyone who violates this article.

SOURCES: Laws, 2008, ch. 450, § 1, eff from and after passage (approved Apr. 8, 2008.)

§ 75-29-605. Criminal penalties.

Any person violating the provisions of this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment; and each such violation shall constitute a separate offense.

SOURCES: Laws, 1978, ch. 353, § 3; Laws, 1980, ch. 320, § 2, eff from and after July 1, 1980.

Cross References — Labeling requirements for honey and honey products, see § 75-29-601 et seq.

Criminal offenses relating to food, see §§ 97-27-1, 97-27-5, 97-27-15 to 97-27-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 57-57.

8 Am. Jur. Legal Forms 2d, Food § 120:52 (indemnity of seller against liability for misbranding of goods shipped under buyer's labels).

25 Am. Jur. Pl & Pr Forms (Rev), Weights M & L, Form 12 (complaint, petition or declaration by state to recover penalty for mislabeled products).

CJS. 36A C.J.S., Food § 59 et seq.

§ 75-29-607. Records of names and addresses of manufacturers.

Distributors are required to keep records of the names and addresses of the manufacturers whose honey they distribute for a period of three (3) years and to provide such information to the commissioner upon request in order to aid the commissioner in locating the source of adulterated honey.

SOURCES: Laws, 1990, ch. 460, § 3, eff from and after July 1, 1990.

ARTICLE 14.

GENERIC EQUIVALENT DRUG PRODUCTS [REPEALED].

§§ 75-29-701 through 75-29-709. Repealed.

Repealed by Laws 1983, ch. 414, § 29, eff from and after July 1, 1983.
§§ 75-29-701 through 75-29-709. [En Laws 1979, ch. 483, §§ 1-5]

Editor's Note — Former § 75-29-701 defined the terms "generic equivalent drug product" and "product selection." Such definitions are now contained in § 73-21-73(i) and (p), respectively.

Former § 75-29-703 provided for the form of prescriptions, including dispensing options. Substantially identical provisions are now contained in § 73-21-115.

Former § 75-29-705 detailed the circumstances when a generic equivalent drug product may be substituted. Identical provisions are now contained in § 73-21-117.

Former § 75-29-707 provided labeling requirements. Identical provisions are now contained in § 73-21-119.

Former § 75-29-709 limited the liability of prescribers and dispensing pharmacists in connection with the substitution of generic equivalent drug products. Identical provisions are now contained in § 73-21-121.

ARTICLE 15.

BOTTLED DRINKING WATER.

SEC.
75-29-801. Sanitary investigations and regulations authorized.
75-29-803. Certification of source or supply.
75-29-805. Fees [Repealed effective July 1, 2020].
75-29-807. Prohibited acts; penalties.
75-29-809. Power to implement article.

§ 75-29-801. Sanitary investigations and regulations authorized.

The State Board of Health shall have authority to make such sanitary investigations and prepare such rules and regulations governing the sanitation and labeling of bottled drinking water as it may deem necessary for the protection and improvement of health.

SOURCES: Laws, 1989, ch. 312, § 1, eff from and after July 1, 1989.

§ 75-29-803. Certification of source or supply.

The State Board of Health shall certify each source or supply of bottled drinking water as meeting equivalent health protection standards as prescribed for drinking water under the Mississippi Safe Drinking Water Law, Section 41-26-1 et seq., Mississippi Code of 1972.

SOURCES: Laws, 1989, ch. 312, § 2, eff from and after July 1, 1989.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by substituting "Section 41-26-1 et seq." for "Sections 41-26-1 et seq." The Joint Committee ratified the correction at its August 5, 2016, meeting.

§ 75-29-805. Fees [Repealed effective July 1, 2020].

The board shall assess a fee in the following amount and for the following purpose:

Annual bottled drinking water certification fee $200.00

Any increase in the fee charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

SOURCES: Laws, 1989, ch. 312, § 3; Laws, 2016, ch. 510, § 62, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the last paragraph.

§ 75-29-807. Prohibited acts; penalties.

(1) The following acts and the causing thereof are prohibited:

Failure by a supplier of bottled drinking water to comply with regulations promulgated pursuant to this article.

(2) Any person who willfully violates or fails or refuses to comply with the provisions of this article or any regulation issued thereunder may, in an action brought in the appropriate court be fined not more that One Hundred Dollars ($100.00) for each day in which such violation occurs or failure to comply continues, and for any subsequent offense a fine of not more than Five Hundred Dollars ($500.00) per day.

SOURCES: Laws, 1989, ch. 312, § 4, eff from and after July 1, 1989.

§ 75-29-809. Power to implement article.

The State Department of Health is authorized and empowered to perform any and all acts necessary to carry out the purposes and requirements of this article.

SOURCES: Laws, 1989, ch. 312, § 5, eff from and after July 1, 1989.

ARTICLE 17.

CHARITABLE DONATION OF FOOD BY RESTAURANT OR OTHER FOOD ESTABLISHMENT.

SEC.

75-29-851. Donations of food to charitable organizations; waiver of liability.

§ 75-29-851. Donations of food to charitable organizations; waiver of liability.

The State Department of Health is authorized to allow restaurants and food establishments which have a current permit issued by the department to dispose of food that has been frozen or properly preserved for human consumption through donation to charitable facilities, charitable organizations and/or individuals providing charitable services. The executive director of the charitable facility or organization receiving such food, or his authorized designee, shall agree to a waiver of liability in favor of the restaurant or food establishment stating that such donations are being provided in the condition used by the restaurant or food establishment, and without warranty of any nature.

SOURCES: Laws, 2009, ch. 534, § 2, eff from and after July 1, 2009.

ARTICLE 19.

REGULATION OF NUTRITIONAL LABELING FOR FOOD AND CONSUMER INCENTIVE ITEMS.

SEC.
75-29-901. Regulation of consumer incentive items and nutrition labeling for certain foods reserved to legislature; political subdivisions prohibited from certain actions; relation to federal law.

§ 75-29-901. Regulation of consumer incentive items and nutrition labeling for certain foods reserved to legislature; political subdivisions prohibited from certain actions; relation to federal law.

(1) As used in this section:

(a) "Food nutrition information" includes, but is not limited to, the caloric, fat, carbohydrate, cholesterol, fiber, sugar, potassium, protein, vitamin, mineral, sodium, and allergen content of food. "Food nutrition information" also includes the designation of food as healthy or unhealthy.

(b) "Political subdivision" means any county, municipality, town, district, instrumentality of the state, public corporation, body corporate, commission, board, agency, authority, public body, politic or other public entity responsible for governmental activities in geographic areas smaller than that of the state.

(c) "Consumer incentive item" means any licensed media character, toy, game, trading card, contest, point accumulation, club membership, admission ticket, token, code or password for digital access, coupon, voucher, incentive, crayons, coloring placemats, or other premium, prize or consumer product that is associated with a meal served by or acquired from a food service operation.

(2) The regulation of consumer incentive items and nutrition labeling for food and nonalcoholic beverages that are menu items in restaurants, retail food establishments, and vending machines is reserved to the Legislature and

may be regulated only by legislation of statewide application enacted after March 18, 2013. The regulation of the provision of food nutrition information and consumer incentive items at food service operations and how food service operations are characterized are matters of general statewide interest that require statewide regulation, and rules adopted under this section constitute a comprehensive plan with respect to all aspects of the regulation of the provision of food nutrition information and consumer incentive items at food service operations in this state. Rules adopted under this section shall be applied uniformly throughout this state.

(3) No political subdivision shall do any of the following:

(a) Enact, adopt or continue in effect local legislation relating to the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;

(b) Condition any license, permit or regulatory approval upon the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;

(c) Ban, prohibit, or otherwise restrict food at food service operations based upon the food's nutrition information or upon the provision or nonprovision of consumer incentive items;

(d) Condition any license, permit or regulatory approval for a food service operation upon the existence or nonexistence of food-based health disparities;

(e) Where food service operations are permitted to operate, ban, prohibit, or otherwise restrict a food service operation based upon the existence or nonexistence of food-based health disparities as recognized by the department of health, the institute of health, or the centers for disease control.

(f) Restrict the sale, distribution, growing, raising or serving of foods and nonalcoholic beverages that are approved for sale by the USDA or other federal or state government agencies.

(4) This section shall not be interpreted as being more restrictive than any federal law or affecting in any manner the regulation of the nutrition labeling of food that is a menu item in restaurants, retail food establishments, and vending machines pursuant to the federal Food, Drug and Cosmetic Act, 21 USC 343(q)(5)(H).

SOURCES: Laws, 2013, ch. 370, § 1, eff from and after passage (approved Mar. 18, 2013.)

ARTICLE 21.

COTTAGE FOOD OPERATIONS.

SEC.
75-29-951. Regulation of cottage food operations.

§ 75-29-951. Regulation of cottage food operations.

(1)(a) A cottage food operation must comply with the applicable requirements of this chapter but is exempt from the permitting requirements of Section 41-3-18 if the cottage food operation complies with the section and has annual gross sales of cottage food products that do not exceed Twenty Thousand Dollars ($20,000.00).

(b) For purposes of this subsection, a cottage food operations annual gross sales include all sales of cottage food products at any location, regardless of the types of products sold or the number of persons involved in the operation. A cottage food operation must provide the department, upon request, with written documentation to verify the operation's annual gross sales.

(2) A cottage food operation may not sell or offer for sale cottage food products over the Internet, by mail order, or at wholesale or to a retail establishment. Cottage food products are nonpotentially hazardous food products as defined by the department.

(3) A cottage food operation may only sell cottage food products which are prepackaged with a label affixed that contains the following information:

(a) The name and address of the cottage food operation.

(b) The name of the cottage food product.

(c) The ingredients of the cottage food product, in descending order of predominance by weight.

(d) The net weight or net volume of the cottage food product.

(e) Allergen information as specified by federal labeling requirements.

(f) If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements.

(g) The following statement printed in at least ten-point type in a color that provides a clear contrast to the background of the label: "Made in a cottage food operation that is not subject to Mississippi's food safety regulations."

(4) This section does not exempt a cottage food operation from any federal tax law, rule, regulation, or certificate that applies to all cottage food operations.

(5)(a) The department may investigate any complaint which alleges that a cottage food operation has violated an applicable provision of this chapter or rule adopted under this chapter.

(b) Only upon receipt of a complaint, the department's authorized officer or employee may enter and inspect the premises of a cottage food operation to determine compliance with this chapter and department rules. A cottage food operation's refusal to permit the department's authorized officer or employee entry to the premises or to conduct the inspection is grounds for disciplinary action pursuant to Section 41-3-59.

(6) This section does not apply to a person operating under a food permit issued pursuant to Section 41-3-18.

SOURCES: Laws, 2013, ch. 481, § 1, eff from and after passage (approved April 1, 2013).

CHAPTER 31

Milk and Milk Products

Article 1. General Provisions 75-31-1
Article 3. Frozen Dairy Products and Fruit Ices. [Repealed]
Article 5. Farm Milk Tank Law 75-31-201
Article 7. Milk Products Sales Law. [Repealed]
Article 9. Sale of Cream and Cream Products. [Repealed]
Article 11. Milk Processor's Regulation Act of 1988 75-31-501

ARTICLE 1.

GENERAL PROVISIONS.

SEC.
75-31-1 through 75-31-63. Repealed.
75-31-65. Regulation of milk and milk products by State Board of Health [Repealed effective July 1, 2020].

§§ 75-31-1 through 75-31-63. Repealed.

Repealed by Laws, 1999, ch. 439, § 2, eff from and after July 1, 1999.

§ 75-31-1. [Codes, Hemingway's 1921, Supp. § 4166j; 1930, § 4269; 1942, § 4537; Laws, 1918, ch. 191; Laws, 1922, ch. 253; Laws, 1928, ch. 296; Laws 1956, ch. 135, § 1, eff 90 days after passage, approved Feb. 24, 1956]

§ 75-31-3. [Codes, 1930, § 4268; 1942, § 4536; Laws, 1928, ch. 296]

§ 75-31-5. [Codes, 1930, § 4270; 1942, § 4538; Laws, 1928, ch. 296]

§ 75-31-6. [Laws, 1986, ch. 371, § 5; Laws, 1989, ch. 313, § 4; Laws, 1989, ch. 547, § 4; Laws, 1997, ch. 334, § 1; Laws, 1998, ch. 485, § 1, eff from and after July 1, 1998]

§ 75-31-7. [Codes, 1930, § 4271; 1942, § 4539; Laws, 1928, ch. 296; Laws, 1996, ch. 340, § 2, eff from and after July 1, 1996]

§ 75-31-9. [Codes, 1930, § 4272; 1942, § 4540; Laws, 1928, ch. 296; Laws, 1956, ch. 135, § 2; Laws, 1970, ch. 258, § 1, eff from and after passage (approved April 3, 1970)]

§ 75-31-11. [Codes, 1930, § 4273; 1942, § 4541; Laws, 1928, ch. 296; Laws, 1956, ch. 135, § 3; Laws, 1972, ch. 377, § 1, eff from and after passage (approved April 26, 1972)]

§ 75-31-13. [Codes, 1930, § 4274; 1942, § 4542; Laws, 1928, ch. 296; Laws, 1972, ch. 377, § 2, eff from and after passage (approved April 26, 1972)]

§ 75-31-15. [Codes, 1930, § 4276; 1942, § 4544; Laws, 1928, ch. 296]

§ 75-31-17. [Codes, 1930, § 4282; 1942, § 4549; Laws, 1928, ch. 296]

§ 75-31-19. [Codes, Hemingway's 1921 Supp, § 4166n; 1930, § 4283; 1942, § 4550; Laws, 1918, ch. 191]

§ 75-31-21. [Codes, 1930, § 4284; 1942, § 4551; Laws, 1928, ch. 296]

§ 75-31-23. [Codes, 1930, § 4275; Laws 1942, § 4543; Laws, 1928, ch. 296]

§ 75-31-25. [Codes, 1930, § 4285; Laws 1942, § 4552; Laws, 1928, ch. 296]

§ 75-31-27. [Codes, 1930, § 4290; Laws 1942, § 4557; Laws, 1928, ch. 76]

§ 75-31-29. [Codes, 1942, § 4560-01; Laws, 1944, ch. 244, § 1]

§ 75-31-31. [Codes, 1942, § 4560-02; Laws, 1944, ch. 244, § 2]

§ 75-31-33. [Codes, 1942, § 4560-03; Laws, 1944, ch. 244, § 3]

§ 75-31-35. [Codes, 1942, § 4560-04; Laws, 1944, ch. 244, § 4]

§ 75-31-37. [Codes, 1942, § 4560-05; Laws, 1944, ch. 244, § 5]

§ 75-31-39. [Codes, 1942, § 4560-06; Laws, 1944, ch. 244, § 6]

§ 75-31-40. [Laws, 1996, ch. 340, § 1, eff from and after July 1, 1996]

§ 75-31-41. [Codes, 1942, § 4560-11; Laws, 1954, ch. 156, § 1; Laws, 1971, ch. 361, § 1; Laws, 1986, ch. 308, § 1, eff from and after July 1, 1986]

§ 75-31-43. [Codes, 1942, § 4560-12; Laws, 1954, ch. 156, § 2, eff 120 days after passage (approved May 4, 1954)]

§ 75-31-45. [Codes, 1942, § 4560-13; Laws, 1954, ch. 156, § 3; Laws, 1986, ch. 308, § 2, eff from and after July 1, 1986]

§ 75-31-47. [Codes, 1942, § 4560-14; Laws, 1954, ch. 156, § 4; Laws, 1997, ch. 334, § 2, eff from and after July 1, 1997]

§ 75-31-49. [Codes, 1942, § 4560-15; Laws, 1954, ch. 156, § 5, eff 120 days after passage (approved May 4, 1954)]

§ 75-31-51. [Codes, 1930, § 4286; 1942, § 4553; Laws, 1928, ch. 296]

§ 75-31-53. [Codes, 1930, § 4287; 1942, § 4554; Laws, 1928, Ex. ch. 13; Laws, 1970, ch. 255, § 4, eff from and after July 1, 1970]

§ 75-31-55. [Codes, 1930, § 4288; 1942, § 4555; Laws, 1928, ch. 296]

§ 75-31-57. [Codes, 1930, § 4289; 1942, § 4556; Laws, 1928, ch. 296; Laws, 1956, ch. 135, § 4, eff 90 days after passage (approved Feb. 24, 1956)]

§ 75-31-59. [Codes, 1930, § 4291; 1942, § 4558; Laws, 1928, ch. 296]

§ 75-31-61. [Codes, 1930, § 4292; 1942, § 4559; Laws, 1928, ch. 296]

§ 75-31-63. [Codes, 1930, § 4293; 1942, § 4560; Laws, 1922, ch. 253]

Editor's Note — Former § 75-31-1 related to milk products defined. For present provisions regarding regulation of milk and milk products by State Board of Health, see § 75-31-65.

Former § 75-31-3 related to dairy products plant; how constructed and equipped.

Former § 75-31-5 related to sanitary regulations. For present provisions regarding regulation of milk and milk products by State Board of Health, see § 75-31-65.

Former § 75-31-6 related to assessment of fees. For present provisions, see § 75-31-65(2).

Former § 75-31-7 related to sales unlawful; inspection. For present provisions, see § 75-31-65.

Former § 75-31-9 related to testing, grading, sampling or weighing milk without license unlawful. For present provisions, see § 75-31-65.

Former § 75-31-11 related to false tests unlawful.

Former § 75-31-13 related to sale of certain bottles and pipettes forbidden.

Former § 75-31-15 related to cheeses defined.

Former § 75-31-17 related to renovated butter defined; labeled.

Former § 75-31-19 related to substitutes for butter or cheese; how may be sold.

Former § 75-31-21 related to oleomargarine defined; labeled.

Former § 75-31-23 related to cream buying or skimming station; operator's license and fees.

Former § 75-31-25 related to milk products plants to file reports.

Former § 75-31-27 related to creameries purchasing milk to furnish producers certain facts; penalty.

Former § 75-31-29 related to milk received for manufacturing purposes; classification for sediment content.

Former § 75-31-31 related to milk received for manufacturing purposes; acceptability.

Former § 75-31-33 related to milk received for manufacturing purposes; tests for sediment and butterfat contents and weights; reports.

Former § 75-31-35 related to milk received for manufacturing purposes; sediment test procedure.

Former § 75-31-37 related to milk received for manufacturing purposes; regulations.

Former § 75-31-39 related to milk received for manufacturing purposes; penalty for violations.

Former § 75-31-40 related to incidental sales of raw goat milk. For present provisions, see § 75-31-65(3).

Former § 75-31-41 related to milk and milk products sold at retail; definitions.

Former § 75-31-43 related to milk and milk products sold at retail; labeling of containers.

Former § 75-31-45 related to milk and milk products sold at retail; minimum butterfat contents.

Former § 75-31-47 related to milk and milk products sold at retail; board of health to make rules and regulations. For present provisions regarding regulation of milk and milk products by State Board of Health, see § 75-31-65.

Former § 75-31-49 related to milk and milk products sold at retail; penalty for violations.

Former § 75-31-51 related to "Person" defined.

Former § 75-31-53 related to how fees handled.

Former § 75-31-55 related to penalty for violations of this chapter. For present provisions, see § 75-31-65(6).

Former § 75-31-57 related to penalty for offering adulterated milk for sale. For present provisions, see § 75-31-65(7).

Former § 75-31-59 related to unfair discrimination; penalty. For present provisions, see § 75-31-65(8).

Former § 75-31-61 related to state board of health to retain its authority. For present provisions regarding regulation of milk and milk products by State Board of Health, see § 75-31-65.

Former § 75-31-63 provided that the chapter not apply to person who does not sell. For present provisions, see § 75-31-65(9).

Cross References — Exemption from liability of certain donors of food, see § 95-7-1 et seq.

§ 75-31-65. Regulation of milk and milk products by State Board of Health [Repealed effective July 1, 2020].

(1) The State Board of Health shall:

(a) Exercise general supervision over the production, processing and sale of milk and milk products and the processing and sale of frozen desserts.

(b) Adopt, modify, repeal and promulgate rules and regulations, after due notice and hearing, and, where not otherwise prohibited by federal law or state law, make exceptions to, grant exemptions from and enforce rules and regulations implementing or effectuating the duties of the board under this section to protect the public health.

(c) Use the most current edition of the Pasteurized Milk Ordinance, or its successor, as the basis for regulation of Grade "A" milk and milk products. Unless as otherwise provided by law, the board, in its discretion, may amend, modify or make additions to the Pasteurized Milk Ordinance if the board determines that such amendment, modification or addition is in the best interest of public health.

(2) The board shall assess fees in the following amount and for the following purpose:

Milk product processing plant annual permit fee	$300.00
Frozen dessert processing plant annual permit fee	$300.00

Any increase in the fees charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65.

The fees authorized under this subsection shall not be assessed for milk or frozen dessert processing plants operated by public schools, by public junior colleges or by state agencies or institutions, including, without limitation, the state institutions of higher learning.

(3) Incidental sales of raw goat milk shall be legal if:

(a) The milk is sold directly to the consumer on the premises where the milk is produced;

(b) No more than nine (9) producing goats are located on the premises where the milk is produced;

(c) The person selling the milk does not advertise the milk for sale; and

(d) The following conditions, which apply to the milking of goats involved in legal incidental sales of raw goat milk, are satisfied:

(i) The milking takes place in a clean environment on a cement or comparable floor;

(ii) The milking place is enclosed by a wall and/or a screen to prevent insects from entering the milking area;

(iii) A fly strap is located in the milking area; and

(iv) Sterile containers are used in the milking process and for storage.

It shall not be unlawful to store raw goat milk in a separate sterile place from pasteurized goat milk. The Cooperative Extension Service at Alcorn State University shall publish and make available literature on the requirements of this subsection, and other related milk-goat maintenance, explaining the recommended care of milk goats and the process of goat milk production and other related subjects. For the purposes of this subsection, the term "incidental sales" means sales from a farm where not more than nine (9) goats are producing milk.

(4) For purposes of this section, the term "person" includes an individual, firm, partnership, association or corporation, foreign or domestic.

(5) All fees collected by the board under this section shall be paid into a special fund within the Department of Health to be used by the department to discharge its duties under this section.

(6) Any person coming within the provisions of this section who fails to comply with or violates any of the provisions of this section or regulations promulgated thereunder, unless otherwise specifically provided in this section,

is guilty of a misdemeanor and, upon conviction, shall be fined not more than One Hundred Dollars ($100.00) or confined in jail for not more than sixty (60) days, or both.

(7) Any person who sells or offers for sale adulterated milk or milk products or cream or frozen desserts or any milk or cream having therein any foreign substance or coloring matter or any chemicals or preservatives, whether for the purpose of increasing the quantity of milk or cream or for improving its appearance or for the purpose of preserving the condition of sweetness thereof, or for any other purpose whatsoever, or unpasteurized milk or milk products except as otherwise authorized by law, is guilty of a misdemeanor, and, upon conviction, shall be fined not more than Five Hundred Dollars ($500.00) or confined in jail not more than sixty (60) days, or both; however, nothing in this subsection shall be construed to prevent the addition of vitamins to milk or milk products in accordance with the rules and regulations promulgated by the board or to prohibit the sale of pasteurized milk or cream or frozen desserts except unlawful cream or unlawful milk products or unlawful frozen desserts as defined in the rules and regulations promulgated by the board.

(8)(a) Any person doing business in the State of Mississippi and engaged in the production, manufacture, sale or distribution of any dairy products that, for the purpose of destroying the business of a competitor in any locality or creating a monopoly, discriminates between different sections, localities, communities, cities or towns of the state by selling such commodity at a lower rate or price in one (1) section, locality, community, city or town than such commodity is sold by such person in any other section, locality, community, city or town, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of the transportation from the point of production or purchase, if a raw product, to the place of sale, storage or distribution, is guilty of unfair discrimination, which is prohibited and declared unlawful; however, prices made to meet competition in such section, locality, community, city or town shall not be in violation of this subsection.

(b) Any person doing business in the State of Mississippi and engaged in the business of purchasing for manufacture, storage, sale or distribution of any dairy product, that, for the purpose of destroying the business of a competitor or creating a monopoly, discriminates between different sections, localities, communities, cities or towns in the state by purchasing such commodity at a higher rate or price in one (1) section, locality, community, city or town than is paid for such commodity by such person in any other section, locality, community, city or town, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of purchase to the point of manufacture, sale or distribution or storage, is guilty of unfair discrimination, which is prohibited and declared to be unlawful; however, prices made to meet competition in such locality, section, community, city or town shall not be a violation of this subsection.

(c) Any person convicted of a violation of this subsection, shall be fined not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00) or shall be imprisoned in jail not more than twelve (12) months, or both.

(9) Nothing in this section shall be construed to apply to any person who does not sell his milk, cream, butter or other products mentioned herein to others.

SOURCES: Laws, 1999, ch. 439, § 1; Laws, 2016, ch. 510, § 63, eff from and after July 1, 2016.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (7). The word "the" was inserted between "by" and "board" so that "regulations promulgated by board" now reads as "regulations promulgated by the board." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Editor's Note — Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the second paragraph of (2).

Cross References — Prohibition against manufacture and sale of adulterated or misbranded food, generally, see § 75-29-5.

Criminal offense of adulteration of food, see § 97-27-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 37 et seq.

39 Am. Jur. 2d, Health § 35 et seq.

CJS. 36A C.J.S., Food §§ 28, 30, 31.

39A C.J.S., Health & Environment §§ 91-92.

ARTICLE 3.

FROZEN DAIRY PRODUCTS AND FRUIT ICES [REPEALED].

GENERAL PROVISIONS [REPEALED]

§§ 75-31-101 through 75-31-123. Repealed.

Repealed by Laws, 1982, ch. 328, § 15, eff from and after July 1, 1982 (See Editor's Note, below).

[Codes, 1942, §§ 4545-01 to 4545-06, 4545-08, 4545-09; Laws, 1928, ch. 296; 1948, ch. 399, §§ 1-6, 8, 9; 1956, ch. 136, §§ 1-4; 1964, ch. 206, §§ 1-3; 1970, ch. 258, § 2; 1970, ch. 415; §§ 1,2; 1973, ch. 407, § 1]

Editor's Note — Laws of 1982, ch. 328, effective from and after July 1, 1982, enacted the Mississippi Frozen Desserts Act of 1982, codified herein as sections 75-31-125 through 75-31-151, and repealed sections 75-31-101 through 75-31-123, regulating the manufacture and sale of frozen dairy products and fruit ices, but continued such repealed sections in effect for the limited purpose of enforcing any obligations arising under the old law prior to July 1, 1982.

Sections 75-31-125 through 75-31-131 and 75-31-134 through 75-31-151 were subsequently repealed by § 3 of Chapter 334, Laws of 1997, effective from and after July 1, 1997.

Section 75-31-133 was subsequently repealed by § 2 of Chapter 331, Laws of 1984, effective from and after April 11, 1984, and by § 3 of Chapter 334, Laws of 1997, effective from and after July 1, 1997.

THE MISSISSIPPI FROZEN DESSERTS ACT OF 1982 [REPEALED]

§§ 75-31-125 through 75-31-131. Repealed.

Repealed by Laws, 1997, ch. 334, § 3, eff from and after July 1, 1997.

§ 75-31-125. [Laws, 1982, ch. 328, § 1]

§ 75-31-127. [Laws, 1982, ch. 328, § 2; Laws, 1984, ch. 331, § 1; Laws, 1988, ch. 575, § 1; Laws, 1990, ch. 354, § 1]

§ 75-31-129. [Laws, 1982, ch. 328, § 3; Laws, 1988, ch. 575, § 2; Laws, 1990, ch. 354, § 2]

§ 75-31-131. [Laws, 1982, ch. 328, § 4]

Editor's Note — Former § 75-31-125 provided for the naming of The Mississippi Frozen Desserts Act of 1982.

Former § 75-31-127 provided definitions for The Mississippi Frozen Desserts Act of 1982.

Former § 75-31-129 was entitled: Pasteurization of frozen dessert mixes; temperature control; records; instrument accuracy required.

Former § 75-31-131 provided for labeling requirements for frozen desserts.

§ 75-31-133. Repealed.

Repealed by Laws, 1984, ch. 331, § 2, eff from and after April 11, 1984 [Section was also repealed by Laws, 1997, ch. 334, § 3, eff from and after July 1, 1997]

[En Laws, 1982, ch. 328, § 5]

Editor's Note — Former § 75-31-133 prohibited the sale or exchange of mellorine-type products.

§§ 75-31-134 through 75-31-151. Repealed.

Repealed by Laws, 1997, ch. 334, § 3, eff from and after July 1, 1997.

§ 75-31-134. [Laws, 1984, ch. 331, § 3]

§ 75-31-135. [Laws, 1982, ch. 328, § 6]

§ 75-31-137. [Laws, 1982, ch. 328, § 7]

§ 75-31-139. [Laws, 1982, ch. 328, § 8; Laws, 1993, ch. 404, § 1]

§ 75-31-141. [Laws, 1982, ch. 328, § 9]

§ 75-31-143. [Laws, 1982, ch. 328, § 10]

§ 75-31-145. [Laws, 1982, ch. 328, § 11; Laws, 1993, ch. 404, § 2]

§ 75-31-147. [Laws, 1982, ch. 328, § 12]

§ 75-31-149. [Laws, 1982, ch. 328, § 13]

§ 75-31-151. [Laws, 1982, ch. 328, § 14]

Editor's Note — Former § 75-31-134 was entitled: False labeling of mellorine products prohibited.

Former § 75-31-135 was entitled: Regulation of products similar to frozen desserts.

Former § 75-31-137 provided for guidelines as to the responsibilities of the Commissioner of Agriculture and Commerce.

Former § 75-31-139 was entitled: Sanitary standards applicable to frozen desserts retail establishments; inspections; suspension or revocation of license.

Former § 75-31-141 was entitled Sanitary requirements for frozen desserts and frozen dessert mixes; storage requirements; inspections.

Former § 75-31-143 was entitled: Monthly reports to commissioner; penalty for late filing; examination of books and records.

Former § 75-31-145 was entitled Manufacturer's license; distributor's license for products manufactured out-of-state; retail establishment license; fees; terms; inspection reports and letters of certification for out-of-state manufacturers.

Former § 75-31-147 was entitled: Penalty for operating without license.

Former § 75-31-149 provided for suspension or revocation of licenses.

Former § 75-31-151 was entitled: "Stop sale" orders; violation of Frozen Desserts Act is misdemeanor.

ARTICLE 5.

FARM MILK TANK LAW.

SEC.
75-31-201. Citation of article.
75-31-203. Application.
75-31-205. Definitions.
75-31-207. Specifications for tanks.
75-31-209. Gauge rod bracket or support.
75-31-211. Surface gauge bracket or supports.
75-31-213. Indicating means.
75-31-215. Spacing, width and identification of graduations; gauge rod; chart.
75-31-217. Portable tank.
75-31-219. Installation.
75-31-221. Tolerances.
75-31-223. Right of inspection.
75-31-225. Regulations.
75-31-227. Liability of farm milk transport operators; insurance.
75-31-229. Article to apply to previously installed farm milk tanks.

§ 75-31-201. Citation of article.

This article shall be known as "The Farm Milk Tank Law of 1958."

SOURCES: Codes, 1942, § 4560-71; Laws, 1958, ch. 156, § 1, eff from and after passage (approved May 6, 1958).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 37 et seq.

§ 75-31-203. Application.

This article applies to farm milk tanks, as defined, only when these are used, or are to be used, under an express contract between the producer and the purchaser and on the premises of the producer, for the commercial measurement of milk or other fluid dairy products. If such measurement is accomplished by the means of a fluid meter, this paragraph does not apply; in such case, the meter shall be subject to approval by the commissioner and to the applicable provisions of the article for liquid measuring device.

SOURCES: Codes, 1942, § 4560-72; Laws, 1958, ch. 156, § 2, eff from and after passage (approved May 6, 1958).

§ 75-31-205. Definitions.

"Commissioner" shall mean the commissioner of agriculture and commerce of the State of Mississippi.

"Farm milk transport operator" shall mean one who grades, samples and gauges milk in farm milk tanks and transports milk from farms to milk plants.

"Commissioner's representative" shall mean one who is designated by the commissioner to enforce the provisions of this article.

"Farm milk tank" shall mean a unit for measuring milk or other fluid dairy product, comprising a combination of:

(a) A stationary tank, whether or not equipped for cooling its contents.

(b) Means for reading the level of liquid on the tank, such as a removable gauge rod or surface gauge.

(c) A chart for converting level-of-liquid readings to gallons and pounds.

(d) Chart readings shall also be shown in avoirdupois weight in conjunction with gallon readings on the basis of eight and six-tenths (8.6) pounds milk per gallon.

(e) Each compartment of a subdivided tank shall, for purposes of this article, be construed to be a farm milk tank. (These units are variously known commercially as farm bulk tanks, farm cooling tanks, farm holding tanks, and producers' tanks.)

(f) "Gauge rod" shall mean a graduated, "dip stick" type of measuring rod designed to be partially immersed in the liquid and to be read at the point where the liquid surface crosses the rod.

(g) "Surface gauge" shall mean a combination of a stationary indicator and a moveable, graduated element designed to be brought into contact with the surface of the liquid from above.

(h) "Other measuring device" shall mean any other means of measuring contents of tank, which must be approved by the commissioner.

SOURCES: Codes, 1942, § 4560-73; Laws, 1958, ch. 156, § 3, eff from and after passage (approved May 6, 1958).

§ 75-31-207. Specifications for tanks.

(1)(a) **Design** — Level: A farm milk tank shall be in normal operation position when it is in level. The tank shall be equipped with suitable special means by which this level can be determined and established, such as a permanently attached two-way level, or other approved and accurate means of reference for level determinations. (A plumb bob is not considered satisfactory for leveling farm milk tanks and shall not be used.) Where two-way levels are used, the indicating lines shall exactly coincide with the extreme limit of the bubble in each instance and the level shall not be less than one-half (½) inch length each way and on tanks six (6) feet long or longer there shall be two (2) such levels, one (1) on each end. Levels shall not be attached to any pipe or other fixture connected to the tank.

(b) Fraudulent construction: A farm tank and all devices designed to be used with or attached thereto and used in connection therewith, shall be of such design and construction that they do not facilitate the perpetration of fraud. Blueprints or photostats showing details of the design and construction of each brand or model of farm milk tanks, including measuring device, shall be submitted to the commissioner for approval.

(c) Permanence: A farm milk tank shall be of such design, construction and material that it will withstand ordinary usage without impairment of the accuracy of measurements made therein. The shell, bulkheads and supporting framework shall be of such design, material and construction that they will not become distorted, under any conditions of liquid lading. The tanks shall be rigidly installed in level on the floor of the milk house without use of removable blocks or shims under the legs.

(d) Identifications: Each farm milk tank shall bear the name of the manufacturer and his address, together with the model and serial number of the individual tank. Each gauge rod or surface gauge shall bear the serial number of the individual tank for which it is intended to be a part of.

(e) Discharge outlet or valve: A farm milk tank shall be equipped with a discharge outlet or valve through which the tank may be completely emptied when the tank is in level.

(f) Complete drainage: A farm milk tank shall be so designed and constructed and shall be so installed that the tank may be completely emptied through the discharge outlet or valve when the tank is in level.

(g) Calibration: Upon installation and/or reinstallation at any farm, the tank shall be satisfactorily calibrated to "deliver" the indicated capacities within the tolerances allowable.

(h) Capacity: The capacity of a farm milk tank shall be determined as the highest liquid level reading obtainable where agitation of liquid will not overflow the tank.

(i) Testing medium: Water shall be used as the medium in determining the capacity of farm milk tanks. (Litmus paper shall not be used in connection with calibrations.)

(2) **Approval seals** — When the farm milk tank installation has been officially tested and approved, the gauge rod or surface gauge and the chart, as well as the tank itself, shall be suitably marked to verify such approval by the commissioner or his representative.

(3) **Responsibility of installation** — It shall be the responsibility of the manufacturer, his agent or dealer, to install the farm milk tank as per specifications and regulations stipulated in this article and in such manner as to give accurate measure and satisfactory service. The manufacturer, his agent or dealer, shall notify the commissioner of the date and location each installation is expected to be completed and have his installation engineer or representative present to assist the state agency in checking the correct setting, gauging and calibration of each farm milk tank. No farm milk tank installed after this article becomes effective shall be put in use on any dairy farm until its setting, gauging and calibration have been approved by the commissioner and purchaser.

(4) **Responsibility of calibration** — It shall be the responsibility of the farm milk tank manufacturer to calibrate farm milk holding tanks. Such calibration shall be made at the factory of the manufacturer or field calibrated. Beginning with the lowest reading on the calibration chart, factory calibration shall be readily field checkable in five-gallon intervals; or reasonable multiples thereof. All equipment used for tank calibration within the State of Mississippi must be approved by the commissioner.

SOURCES: Codes, 1942, § 4560-74; Laws, 1958, ch. 156, § 4; Laws, 1974; ch. 389, eff from and after passage (approved March 22, 1974).

§ 75-31-209. Gauge rod bracket or support.

If a tank is designed for use with a gauge rod, a substantial and rigid gauge rod bracket or other suitable supporting elements for positioning the gauge rod shall be so constructed that whenever the rod is placed in engagement with the bracket or supports and released, the rod will automatically seat itself at a fixed height and in a vertical position. When a gauge rod is properly seated on its bracket or supports, there shall be a clearance of at least three (3) inches between the graduated face of the rod and any tank wall or other surface that it faces.

The arrangements shall be such that it shall be impossible to reverse the reading position. The part of the gauge rod bracket which is designed to hold the gauge rod and which comes in contact with the gauge rod shall be sufficiently hardened that, under continual usage or careless handling, it will not become so worn that it will allow the gauge rod to hang to an improper depth in the tank, thereby causing an error in the measure of the milk in the tank.

SOURCES: Codes, 1942, § 4560-75; Laws, 1958, ch. 156, § 5, eff from and after passage (approved May 6, 1958).

§ 75-31-211. Surface gauge bracket or supports.

If a tank is designed for use with a surface gauge, a substantial or rigid surface gauge bracket or other suitable supporting elements for positioning the surface gauge shall be provided. A surface gauge and its bracket or other supporting elements shall be so constructed that whenever the gauge assembly is placed in engagement with the bracket or supports, the indicator, if not permanently mounted on the tank, will automatically seat itself in correct operating position, and the graduated element will be vertically positioned and will be securely held at any height to which it may be manually set.

SOURCES: Codes, 1942, § 4560-76; Laws, 1958, ch. 156, § 6, eff from and after passage (approved May 6, 1958).

§ 75-31-213. Indicating means.

(1) **Gauge rod** — When properly seated in position, a rod shall not touch the bottom of the tank unless this is required by the design of the supporting elements. The rod shall be graduated throughout at intervals corresponding to the gallonage range within which the readings of liquid level to be made. Farm holding tanks shall be so constructed that nothing shall prevent vertical insertion of the gauge rod. That part of the gauge rod designed to hold the gauge rod in the gauge rod bracket and which comes in contact with the gauge and bracket, shall be sufficiently hardened that, under continual usage or careless handling, it will not become so worn that it will permit the gauge rod to hang to an improper depth in the tank, thereby causing an error in the measuring of the milk in the tank.

(2) **Surface gauge** — When properly engaged with its bracket and set to its lowest position, the surface gauge shall not touch the bottom of the tank. The gauge shall be graduated throughout at intervals corresponding to the gallonage range within which the readings of liquid level are to be made.

SOURCES: Codes, 1942, § 4560-77; Laws, 1958, ch. 156, § 7, eff from and after passage (approved May 6, 1958).

§ 75-31-215. Spacing, width and identification of graduations; gauge rod; chart.

(1) **Spacing, width and identification of graduations** — On a gauge rod or surface gauge, the spacing of the graduations, center to center, shall be 0.03125 (1⁄32) inch, if graduations are in inches, or one (1) millimeter, if graduated in centimeters. The width of any graduation mark or line shall not exceed .008 of an inch (0.2mm) and shall not be less than .0055 of an inch (0.1mm).

(2) **Graduation identification** — The graduation scale shall be in terms of inches and fractions of an inch, or centimeters and fractions of a centimeter. No error shall be greater than 1⁄32 inch in the entire length of gauge rod or surface gauge, if graduations are in inches, or one (1) millimeter if in

centimeters. Main graduation marks or lines shall be successively longer than the minimum graduation marks or lines, and shall be identifiable in spacings not to exceed one-fourth (¼) inch, if graduations are in inches, or five (5) millimeters, if graduations are in centimeters. Graduations shall start at the bottom of the gauge rod or surface gauge and shall be regular in sequence.

(3) **Graduation** — Gauge rod graduations and numerals identifying same shall be milled, etched or otherwise indented, but indentations shall not be so deep as to cause a capillary effect preventing straight line readings across the entire face of the gauge rod. Surface gauge graduations shall be of such material that they will not become obliterated. Graduations shall be parallel and at a ninety (90) degree angle to the perpendicular axis of the gauge rod or surface gauge.

(4) **Values of graduations** — On a gauge rod or surface gauge, the graduations shall be designated in inches and fractions thereof or centimeters and fractions thereof. In either of these cases there shall be provided by the manufacturer for each such rod or gauge and each tank with which it is associated, a volume chart showing volume in terms of gallons and pounds of liquid in the tank, corresponding to each graduation on the rod or gauge.

(5) **Dimensions and material** — A gauge rod shall be made of 18-8 stainless steel or of other suitable approved material and design. A gauge rod shall be rectangular in shape and shall be not less than one-fourth (¼) inch in thickness and not less than three-fourths (¾) inch in width.

(6) **Gauge rod** — When properly seated in position, a rod shall not touch the bottom of the tank unless this is required by the design of the supporting elements. The rod shall be graduated throughout an interval corresponding to the gallonage range within which readings of liquid level are to be made. The graduated face of the rod shall have a dull finish.

(7) The maximum swing allowable at the bottom of the gauge rod when in reading position shall not exceed one-half (½) inch.

(8) **Chart** — A chart shall be supplied with each farm milk tank and shall show values at least to the nearest pound for a farm milk tank of all capacities. All letters and figures on a chart shall be distinct and easily readable.

(a) Opposite each increment shall be shown the value of that individual increment in terms of United States avoirdupois weight.

(b) The chart shall bear the name and address of the manufacturer; of the producer; the model and serial number of the farm milk tank for which it is intended; the date of the calibration; the name of the person making calibration and the signature of the commissioner's representative, if any, who witnesses the calibration; a legend stating that the calibration figures are based on 1/32 inch increments, if graduations are in inches, or one (1) millimeter, if graduations are in centimeters.

(c) Four (4) copies of each chart shall be furnished, all four (4) copies to be certified by the commissioner's representative, if there be one, witnessing the calibration; one (1) copy to be kept by the dairy; one (1) copy to be kept by the manufacturer; and one (1) by the commissioner's representative who witnessed the calibration, and in the absence of such an official, one (1) copy shall be mailed to the commissioner's representative, Mississippi Department of Agriculture and Commerce, Jackson, Mississippi. One (1) copy is to be given the processor who picks up the milk.

(d) The dairyman's chart shall be laminated and sealed between transparent sheets of waterproof material, after having had the imprint of the seal of the Dairy Division, Mississippi Department of Agriculture and Commerce, imprinted thereon. Where both sides are utilized, both sides shall be shown, and shall be hung or otherwise placed in a conspicuous place in the dairyman's milk house in which the farm milk tank is located.

(e) All printing and/or typing shall be clear and distinct and all calibration figures shall be placed exactly in line with the increments they are intended to represent.

SOURCES: Codes, 1942, § 4560-78; Laws, 1958, ch. 156, § 8; Laws, 1978, ch. 352, § 1, eff from and after July 1, 1978.

§ 75-31-217. Portable tank.

A portable tank shall be of the center-reading type.

SOURCES: Codes, 1942, § 4560-79; Laws, 1958, ch. 156, § 9, eff from and after passage (approved May 6, 1958).

§ 75-31-219. Installation.

(1) Farm milk tanks and farm milk tank installations shall in every instance meet the State of Mississippi specifications and tolerances, as provided in this article, and conform with the rules and regulations of the commissioner of agriculture and commerce, as provided herein.

(2) **Farm milk tanks with adjustable legs** — Adjustable legs shall be flat across the bottom and shall have permanently attached thereto a metal plate four (4) inches square by at least ¼ inch in thickness, or in lieu thereof, a metal flange of comparable dimensions permanently affixed to the bottom of the legs.

(3) **Milk house floor** — If the concrete floor of the dairyman's milk house is less than four (4) inches thick or is in poor condition, a concrete pier shall be provided for each leg of the farm milk tank.

(4) **Concrete piers** — Concrete piers shall not be less than six (6) inches by six (6) inches across the top and shall taper to not less than twelve (12) inches by twelve (12) inches across the bottom and shall not be less than eighteen (18) inches in depth. The top of each pier shall extend only to a point approximately two (2) inches below the surface of the milk house floor; in locations where the weather is very cold, all piers must go below the "frost line" for their foundations.

(5) All farm milk tanks shall be filled to capacity during leveling operations and shall be completely filled prior to the calibration thereof, for the purpose of setting the tank to a permanent position.

SOURCES: Codes, 1942, § 4560-80; Laws, 1958, ch. 156, § 10, eff from and after passage (approved May 6, 1958).

§ 75-31-221. Tolerances.

(1) **Minimum tolerance values** — On all farm milk tanks, the maintenance and acceptance tolerances applied shall not be smaller than one-half (½) the value of the minimum graduated interval on the gauge rod or surface gauge.

(2) **Basic tolerance values** — Basic maintenance and acceptance tolerance on underregistration and overregistration shall be as follows: (The error, at any liquid level, of a tank to which the tolerance is applied, is the difference between the gallonage shown for that level on the gallonage chart and the corresponding gallonage determined by test.) Basic maintenance and acceptance tolerances, on underregistration and on overregistration on farm milk tanks are not more than 1/32 of an inch, if graduated in inches, or one (1) millimeter, if graduations are in centimeters.

SOURCES: Codes, 1942, § 4560-81; Laws, 1958, ch. 156, § 11; Laws, 1978, ch. 352, § 2, eff from and after July 1, 1978.

§ 75-31-223. Right of inspection.

The commissioner or his duly appointed representative shall have authority to enter, at any daylight hour, dairy farms, dairy barns, or milk houses for the purpose of inspecting farm operations and to correct or have corrected any part of farm milk tank operations found to be incorrect or improperly operated.

No person shall be employed or contracted with as a farm milk transport operator unless he has taken the required examination for milk grader, milk sampler, milk weigher and has secured his licenses from the commissioner.

Sampling for butterfat must conform to requirements of the Dairy and Creamery Law and to regulations promulgated by the commissioner. Samples must be properly refrigerated from dairy farm to plant.

SOURCES: Codes, 1942, § 4560-82; Laws, 1958, ch. 156, § 12, eff from and after passage (approved May 6, 1958).

Cross References — Duties of commissioner of agriculture and commerce, generally, see § 69-1-13.

§ 75-31-225. Regulations.

The commissioner of agriculture and commerce is hereby authorized and empowered to adopt, promulgate, change and amend any and all necessary regulations in order to carry out the provisions of this article.

SOURCES: Codes, 1942, § 4560-83; Laws, 1958, ch. 156, § 13, eff from and after passage (approved May 6, 1958).

§ 75-31-227. Liability of farm milk transport operators; insurance.

Farm milk transport operators hauling milk from the producer to the dairy plant, processing plant, creamery, or other destination, shall be liable for any and all damage or destruction to said milk en route and shall be required to carry cargo and casualty insurance covering such milk en route in an amount approved by the commissioner of agriculture and commerce with an insurance company authorized to do business in the state. In the event such farm milk transport operator does not obtain and have such insurance at all times, his license to grade, sample and weigh milk shall be subject to cancellation.

SOURCES: Codes, 1942, § 4560-84; Laws, 1958, ch. 156, § 14, eff from and after passage (approved May 6, 1958).

§ 75-31-229. Article to apply to previously installed farm milk tanks.

This article shall apply to farm milk tanks which have already been installed and such tanks shall be required to meet the standards and specifications provided by this article. The commissioner of agriculture and commerce shall allow a reasonable time within which such farm milk tanks may be brought up to standard.

SOURCES: Codes, 1942, § 4560-85; Laws, 1958, ch. 156, § 15, eff from and after passage (approved May 6, 1958).

ARTICLE 7.

MILK PRODUCTS SALES LAW
[REPEALED].

§§ 75-31-301 through 75-31-329. Repealed.

Repealed by Laws, 1980, ch. 318, eff from and after April 7, 1980.

§§ 75-31-301 through 75-31-329. [Codes, 1942, §§ 4560-101 to 4560-121; Laws, 1960, ch. 156, §§ 1-21; Laws, 1970, ch. 258, § 3]

Editor's Note — Former §§ 75-31-301 through 75-31-329 related to Milk Products Sales Law.

ARTICLE 9.

SALE OF CREAM AND CREAM PRODUCTS [REPEALED].

§§ 75-31-401 through 75-31-427. Repealed.

Repealed by Laws, 1999, ch. 439, § 2, eff from and after July 1, 1999.

§ 75-31-401. [Codes, 1942, § 4561; Laws, 1936, ch. 292]
§ 75-31-403. [Codes, 1942, § 4562; Laws, 1936, ch. 292]
§ 75-31-405. [Codes, 1942, § 4563; Laws, 1936, ch. 292]
§ 75-31-407. [Codes, 1942, § 4564; Laws, 1936, ch. 292]
§ 75-31-409. [Codes, 1942, § 4565; Laws, 1936, ch. 292]
§ 75-31-411. [Codes, 1942, § 4566; Laws, 1936, ch. 292]
§ 75-31-413. [Codes, 1942, § 4567; Laws, 1936, ch. 292]
§ 75-31-415. [Codes, 1942, § 4568; Laws, 1936, ch. 292]
§ 75-31-417. [Codes, 1942, § 4569; Laws, 1936, ch. 292]
§ 75-31-419. [Codes, 1942, § 4570; Laws, 1936, ch. 292]
§ 75-31-421. [Codes, 1942, § 4571; Laws, 1936, ch. 292]
§ 75-31-423. [Codes, 1930, § 4277; 1942, § 4572; Laws, 1928, ch. 296; Laws, 1936, ch. 292]
§ 75-31-425. [Codes, 1942, § 4573; Laws, 1936, ch. 292]
§ 75-31-427. [Codes, 1942, § 4574; Laws, 1936, ch. 292]

Editor's Note — Former § 75-31-401 related to definitions. For present provisions regarding regulation of milk and milk products by State Board of Health, see § 75-31-65.

Former § 75-31-403 related to grades of cream.
Former § 75-31-405 related to price.
Former § 75-31-407 related to price posted.
Former § 75-31-409 related to graders.
Former § 75-31-411 related to cream graded; record.
Former § 75-31-413 related to sediment.
Former § 75-31-415 related to refrigeration; sanitation.
Former § 75-31-417 related to samples.
Former § 75-31-419 related to acts prohibited.
Former § 75-31-421 related to penalty.
Former § 75-31-423 related to butter defined.
Former § 75-31-425 related to fees deposited.
Former § 75-31-427 related to how the article was to be construed.

ARTICLE 11.

MILK PROCESSOR'S REGULATION ACT OF 1988.

SEC.	
75-31-501.	Short title.
75-31-503.	Definitions.
75-31-505.	Payments from sale of milk to be held in trust; exceptions.
75-31-507.	Conditions for purchase of raw milk from dairy farmer.
75-31-509.	Applicability to transactions between cooperative association and its members.

75-31-511. Liability for failure to pay as provided.

§ 75-31-501. Short title.

This article shall be entitled the "Milk Processor's Regulation Act of 1988."

SOURCES: Laws, 1988, ch. 472, § 1, eff from and after July 1, 1988.

§ 75-31-503. Definitions.

The following words shall have the following meaning unless context shall indicate otherwise:

(a) "Cooperative association" means any group in which farmers act together in the market preparation, processing, or marketing of farm products or any association organized under Section 79-19-1 et seq., Mississippi Code of 1972.

(b) "Dairy farmer" means a farmer engaged in the business of producing milk for sale to milk processors or to a cooperative association of which the dairy farmer is a member.

(c) "Milk processor" means a person who operates a milk, milk products, or frozen desserts processing plant that is located in the State of Mississippi.

(d) "Purchase price" means an amount of money, based on estimated butterfat content at the time of delivery, that a milk processor agrees to pay a dairy farmer for the purchase of raw milk.

SOURCES: Laws, 1988, ch. 472, § 2, eff from and after July 1, 1988.

§ 75-31-505. Payments from sale of milk to be held in trust; exceptions.

(1) Except as provided by subsection (2) of this section, a milk processor shall hold in trust all payments received from the sale of milk or milk products for the benefit of the dairy farmer from whom the milk was purchased until the dairy farmer has received full payment of the purchase price for the milk.

(2) A milk processor shall not be required to maintain the payments in trust when:

(a) Payment of the purchase price is not received and the dairy farmer does not give written notice to the milk processor by the end of the thirtieth day after the final date for payment of the purchase price as specified by Section 75-31-507; or

(b) A payment instrument received by dairy farmer is dishonored, and the dairy farmer does not give written notice to the milk processor, by the end of the fifteenth business day after the date that the notice of dishonor was received.

SOURCES: Laws, 1988, ch. 472, § 3, eff from and after July 1, 1988.

§ 75-31-507. Conditions for purchase of raw milk from dairy farmer.

A milk processor shall not purchase raw milk from a dairy farmer unless:

(a) Payment of the purchase price is made according to the provisions prescribed by an applicable federal milk marketing order;

(b) Any initial or additional provisions are agreed on by both the dairy farmer or his agent and the milk processor; and

(c) The medium of exchange used is cash, a check for the full amount of the purchase price, or a wire transfer of money in the full amount.

SOURCES: Laws, 1988, ch. 472, § 4, eff from and after July 1, 1988.

Cross References — Requirement that payments received from sale of milk shall be held in trust, see § 75-31-505.

§ 75-31-509. Applicability to transactions between cooperative association and its members.

This article does not apply to transactions between a cooperative association, while it is acting as a marketing agent, and its members.

SOURCES: Laws, 1988, ch. 472, § 5, eff from and after July 1, 1988.

§ 75-31-511. Liability for failure to pay as provided.

A milk processor who fails to pay for raw milk as provided by this article shall be liable to the dairy farmer for:

(a) The purchase price of the raw milk;

(b) Interest on the purchase price at the highest legal rate from the date possession is transferred until the date the payment is made in accordance with this article; and

(c) A reasonable attorney's fee for the collection of the payment.

SOURCES: Laws, 1988, ch. 472, § 6, eff from and after July 1, 1988.

CHAPTER 33

Meat, Meat-Food and Poultry Regulation and Inspection

Article 1. Meat, Meat-Food and Poultry Regulation and Inspection Law of 1960 75-33-1
Article 3. Imported Meats. [Repealed]

ARTICLE 1.

MEAT, MEAT-FOOD AND POULTRY REGULATION AND INSPECTION LAW OF 1960.

SEC.
75-33-1. Short title of article.
75-33-3. Definition of terms; exemptions.
75-33-5. Public meetings; rules and regulations; records; amendments to regulations.
75-33-7. Licenses; fees; applications; issuance; posting; agreements with federal authorities as to poultry inspection.
75-33-9. Requirements as to buildings.
75-33-11. Employees.
75-33-13. Employees; qualifications of agents.
75-33-15. Employees; authority to enter and examine establishment.
75-33-17. Unlawful to prevent entrance and examination of establishment.
75-33-19. Designation of animal, meat or meat-products found to be fit for food.
75-33-21. Animal, meat or meat-products found unwholesome.
75-33-23. Unsanitary establishment or equipment; reports; notice; suspension or revocation of license on failure to remedy; appeals.
75-33-25. Unlawful acts or omissions by agent or meat-hygiene agent.
75-33-27. Gifts, etc., to agents or employees prohibited, when.
75-33-29. Acts constituting violations.
75-33-31. Grading and inspection services; establishment of grades and quality; minimum standards.
75-33-33. Additional inspections and grading service; agreements; federal financial assistance; inspection of plants not federally inspected; training of inspectors; reimbursement of state for inspection services by certain plants.
75-33-35. Advertising by person receiving grading and inspection services.
75-33-37. Penalties.
75-33-39. Powers of commissioner regarding exotic animals.

§ 75-33-1. Short title of article.

This article may be cited as "The Meat, Meat-Food and Poultry Regulation and Inspection Law of 1960."

SOURCES: Codes, 1942, § 4575-01; Laws, 1960, ch. 141, § 1, eff from and after passage (approved April 21, 1960).

Cross References — Regulation of animal and poultry by-products disposal or rendering plants, see § 41-51-1 et seq.

Sale and inspection of food and drugs, generally, see § 75-29-1 et seq.

Meat inspection, see § 75-35-1 et seq.

Exemption from liability of certain donors of food, see § 95-7-1 et seq.

Federal Aspects — Poultry and poultry product inspection, see 21 USCS § 451 et seq.

Meat inspection, see 21 USCS § 601 et seq.

JUDICIAL DECISIONS

1. In general.

Sections 75-33-1 et seq. were enacted for the purpose of licensing and regulating persons engaged in the business of manufacturing, slaughtering and preparing animals to be used for meat and meat-food products to be sold, and do not apply to wholesome meat accidentally killed and prepared for the owner's use. King v. Mississippi Power & Light Co., 244 Miss. 486, 142 So. 2d 222 (1962).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 3 et seq.

CJS. 36A C.J.S., Food §§ 4, 30 et seq.

§ 75-33-3. Definition of terms; exemptions.

(1) For the purpose of this article, the words and terms used herein shall have ascribed to them the following meanings:

(a) The word "person" shall include individuals, partnerships, corporations, associations, and any other legal entity recognized by law.

(b) The terms "meat" and "meat-food products," whenever used in this article, shall include the carcasses or parts thereof, of cattle, sheep, goats, other ruminants, including exotic animals, swine, horses, mules, rabbits, poultry and ratites and the meat and meat-food products of such animals.

(c) The term "food unfit for human consumption" shall be construed to include the meat and meat-food products of horses and mules and all meats or meat-food products which are so affected with disease that it would be dangerous to use the meat or other parts for human food; also all meats or meat-food products which are contaminated, putrid, unsound, unhealthful, or otherwise unfit for food, or which have been derived from any animal which has died as a result of disease or accident, or which was in a dying condition at the time of slaughter.

(d) The word "establishment" as used in this article, shall include: (i) any building or structure in which slaughtering, butchering, meat processing, meat canning, meat packing, meat manufacturing or rendering is carried on; and (ii) the ground upon which such building or structure is erected, and so much ground adjacent thereto as is used in carrying on the business of such establishment, including drains, gutters, waste disposal and cesspools used in connection with the establishment.

(e) The word "equipment," as used in this article, shall include all machinery, fixtures, containers, vessels, tools, implements and apparatus used in and about an establishment.

(f) The word "commissioner," as used in this article, shall mean the Commissioner of Agriculture and Commerce, or his duly authorized deputies.

(g) The word "ratite," means a member of a group of large flightless birds including the ostrich, rhea and emu.

(h) The words "exotic animal," mean a member of a species of game not indigenous to this state, including axis deer, fallow deer, red deer or other cloven-hooved ruminant animals and ratites.

(2) All persons engaged in business as a meat broker, jobber, dealer, distributor, peddler, transporter, or wholesaler of any carcasses of meat animals or poultry or parts or products thereof, whether fresh, frozen, cured or otherwise and whether canned, wrapped, packaged or prepackaged, but not otherwise handled, whether intended for human food or other purposes, or any person engaged in the business as a public warehouseman storing any such items or products shall register with the commissioner on forms provided and shall operate under the applicable inspection authority provided in this article and by the Mississippi Meat Inspection Act of 1968 [Chapter 35 of Title 75], provided persons operating the aforementioned nonslaughter and nonprocessing businesses are exempt from the license and fee specified in Section 75-33-7.

(3) The slaughtering by any person of animals and poultry of his own raising, and the processing and transportation by him of animals and poultry products exclusively for use by him and members of his household and his nonpaying guests and employees, shall be exempt from the provisions of this article. Any other operations of an unlicensed, unapproved slaughterhouse and/or processing facility to escape the provisions of this article shall be unlawful, and any person found guilty of such violation shall be punished as provided in Section 75-33-37.

(4) The provisions of this article shall not apply to poultry producers with respect to poultry of their own raising on their own farms on the same basis as now provided in the United States Wholesome Poultry Products Act and regulations thereunder, and such exemptions shall be consistent with said act and regulations. However, the adulteration and misbranding provisions of said act, other than the requirement of the inspection legend, shall apply to articles which are exempt from inspection by said act and regulations.

SOURCES: Codes, 1942, § 4575-02; Laws, 1960, ch. 141, § 2; Laws, 1972, ch. 477, § 1; Laws, 1974, ch. 490; Laws, 1996, ch. 543, § 1, eff from and after July 1, 1996.

Federal Aspects — United States Wholesome Poultry Products Act, see 21 USCS § 451 et seq.

JUDICIAL DECISIONS

1. In general.
2. Religious rituals.

1. In general.

Defendant's actions violated both the language and the spirit of the Mississippi law that seeks to protect the health of consumers by requiring the sanitary operation of slaughterhouses; defendant allowed persons to come to him for assistance with their religious obligations, purchase an animal from him, pay him for his assistance with a religious ceremony in the form of a ritual slaughter, and then permitted them to leave with the meat. Spell v. Muhammad, 756 So. 2d 748 (Miss. 2000).

Sections 75-33-1 et seq. were enacted for the purpose of licensing and regulating persons engaged in the business of manufacturing, slaughtering and preparing animals to be used for meat and meat-food products to be sold, and do not apply to wholesome meat accidentally killed and prepared for the owner's use. King v. Mississippi Power & Light Co., 244 Miss. 486, 142 So. 2d 222 (1962).

2. Religious rituals.

Defendant's assertion that he fit into the exception carved out for ritual slaughter under subsection (3) because he gave the meat away and only charged for the ritual slaughter, did not justify the chancellor's allowing defendant greater freedoms than either subsection (3) or the First Amendment requires. Spell v. Muhammad, 756 So. 2d 748 (Miss. 2000).

RESEARCH REFERENCES

ALR. Recovery for loss of business resulting from resale of unwholesome food or beverages furnished by another. 17 A.L.R.2d 1379.

Validity and construction of statutes, ordinances or regulations concerning the sale of horse meat for human consumption. 19 A.L.R.2d 1013.

§ 75-33-5. Public meetings; rules and regulations; records; amendments to regulations.

The commissioner may adopt, amend or repeal rules and regulations for the administration and enforcement of this article.

The commissioner shall not promulgate any rules and regulations which are inconsistent with the rules and regulations of the U.S. Department of Agriculture governing the businesses covered by this article.

Every licensee shall be furnished a copy of such rules and regulations when a license is issued. The commissioner shall prescribe and supply the forms to be used to comply with this article.

SOURCES: Codes, 1942, § 4575-03; Laws, 1960, ch. 141, § 3; Laws, 2004, ch. 518, § 4, eff from and after July 1, 2005.

Cross References — Commissioner and department of agriculture and commerce, see § 69-1-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Adoption of federal meat inspection regulations.

1. In general.

Sections 75-33-1 et seq. were enacted for the purpose of licensing and regulating persons engaged in the business of manufacturing, slaughtering and preparing animals to be used for meat and meat-food products to be sold, and do not apply to wholesome meat accidentally killed and prepared for the owner's use. King v. Mississippi Power & Light Co., 244 Miss. 486, 142 So. 2d 222 (1962).

2. Adoption of federal meat inspection regulations.

Mississippi Department of Agriculture and Commerce lawfully adopted the Federal Meat Inspection Act, 22 USCS § 601 et seq., and the federal meat inspection rules and regulations codified in 9 C.F.R § 310.25(a)(2)(v)(A), because the Meat, Meat-Food and Poultry Regulation and Inspection Law of 1960, Miss. Code Ann. § 75-33-5, did not require that a meeting be held each time a regulation was adopted. Slay v. Spell, 882 So. 2d 254 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

Am Jur. 35 Am. Jur. 2d, Food § 2 et seq.

CJS. 36A C.J.S., Food §§ 4, 30 et seq.

§ 75-33-7. Licenses; fees; applications; issuance; posting; agreements with federal authorities as to poultry inspection.

(1) It shall be the duty of every person operating an establishment as defined in Section 75-33-3, except retail dealers, restaurants or eating places and establishments operating under the U.S. Department of Agriculture system of inspection, to apply to the commissioner for a license to operate such establishment before July 1, 1960, and annually thereafter before July of each succeeding year, and pay to the commissioner at the time said application for registration and license is filed, a fee of ten dollars ($10.00) for each establishment operated, and a like fee of ten dollars ($10.00) for the renewal thereof.

The fees for the issuance of the license and the renewals thereof, together with such other fees and charges authorized by this article, shall be kept by the commissioner in a separate fund to be used to defray the expenses of the enforcement of this article. A strict accounting shall be made of all funds received and disbursed.

(2) The application for a license shall be made on a form to be supplied by the commissioner, and shall show the location of each establishment and the name and address of the owner, and the name and address of the lessor or lessee. The application shall have attached thereto the affidavit of the person applying for the license that the facts set forth are true and correct.

(3) Upon approval of application for license and payment of license fee, and upon approval of sanitary conditions in the establishment, and every place used in connection therewith, the commissioner shall issue to each applicant a license which shall expire on June 30 of each year, and which shall authorize

the operation of said establishment for the fiscal year, or portion thereof, for which a license is issued.

(4) Such license shall be posted in a conspicuous place in or at the place of business of such licensee, and exposed for inspection by any person or persons who may be properly authorized to make such examination.

(5) From and after the first day of July 1960, it shall be unlawful for any person to operate an establishment unless said establishment is duly licensed and inspected in accordance with the provisions of this article.

The commissioner of agriculture and commerce shall develop and administer a poultry inspection program which shall require mandatory poultry product inspection that imposes antemortem and postmortem inspection, reinspection and sanitation requirements that are at least equal to those under the federal Poultry Products Inspection Act of 1968 [21 USCS §§ 451 et seq.], and the regulations thereunder with respect to all or certain classes of persons engaged in slaughtering poultry or processing poultry products for use as human food solely for distribution with this state.

Any existing provision of law in regard to fees, mandatory requirements, other options, or inspection administration in conflict herewith, shall not affect the foregoing mandatory inspection provision.

Provided, further, that the commissioner of agriculture and commerce shall be authorized to enter into a cooperative agreement with the U.S. Department of Agriculture for compliance with the Poultry Products Inspection Act of 1968 and amendments thereto [21 USCS §§ 451 et seq.], for the purpose of financing and enforcing a mandatory antemortem and postmortem inspection, reinspection and sanitation requirements that are at least equal to those under the within cited federal act with respect to all or certain persons engaged in slaughtering poultry or processing poultry products in this state for use as human food solely for distribution within this state. The commissioner is further empowered to make inspection of other poultry slaughtering and processing facilities when he deems same necessary to the proper sanitation and distribution of such products solely within this state.

SOURCES: Codes, 1942, § 4575-04; Laws, 1960, ch. 141, § 4; Laws, 1968, ch. 237, § 1; Laws, 1970, ch. 255, § 6; Laws, 1971, ch. 407, § 1; Laws, 1972, ch. 477, § 2, eff from and after 30 days after passage (approved May 9, 1972).

Cross References — Copy of rules and regulations to be provided every licensee when license is issued, see § 75-35-5.

Federal Aspects — Federal Poultry Products Inspection Act of 1968, see 21 USCS § 451 et seq.

ATTORNEY GENERAL OPINIONS

Without a license to slaughter granted by the Department of Agriculture and Commerce and a Department approved facility, one may not lawfully slaughter ostriches, emus or rheas (ratites) that belong to another person. Spell, May 22, 1998, A.G. Op. #98-0260.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 11.
CJS. 36A C.J.S., Food §§ 17, 18.

§ 75-33-9. Requirements as to buildings.

The buildings used in connection with any establishment shall be of sound construction and kept in good repair and shall be of such construction as to prevent the entrance or harboring of vermin.

Floors, side walls and ceilings shall be constructed of impervious material and so constructed that they can be readily kept clean.

Floors shall slope so all waste water will flow to a floor drain.

Floor drains shall be equipped with strainers and traps.

All rooms shall be provided with abundant light, both natural and artificial, and shall be ventilated to eliminate objectionable odors and moisture condensation.

In abattoirs where poultry is processed, the eviscerating, cutting and packaging operation must be separated from the killing, scalding and dressing operations either by the use of separate rooms or by a thorough and complete cleanup prior to the eviscerating, cutting and packaging operations.

Provided, however, any existing buildings now being used in the operation of any establishment covered by this article, which do not meet the requirements set out herein, shall be rigidly inspected and diligently cleaned in an effort to provide a maximum of sanitary conditions and to insure sanitary meat, meat-food products and poultry. The commissioner shall endeavor to improve the quality of all existing buildings until they have been made to conform to the full requirements of this article, but he shall not close down any establishment for the failure for such existing facilities to meet the requirements outlined above.

Provided, however, any alteration, remodeling or additions to any existing facility shall meet the requirements specified by this article and no such new buildings, establishments, and/or repairs, remodeling and/or alterations shall be made until after the commissioner has approved the same and is satisfied that such new construction or such changes in existing facilities do comply with the provisions of this article.

SOURCES: Codes, 1942, § 4575-05; Laws, 1960, ch. 141, § 5, eff from and after passage (approved April 21, 1960).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 19.

§ 75-33-11. Employees.

The commissioner is hereby authorized and empowered to designate or assign any employee of the department of agriculture and commerce to perform and carry out the provisions of this article. Also, he is authorized to employ such other personnel as he may consider necessary to assist him in promulgating the rules and regulations authorized hereunder and employ such other personnel as he may consider necessary to assist him in promulgating the rules and regulations authorized hereunder and employ such inspectors as he may consider necessary for the faithful administration and enforcement of this article and the rules and regulations promulgated hereunder.

The commissioner shall endeavor to appoint, designate and employ persons qualified in the respective job assignments for the enforcement of this article. Any employee may be dismissed at any time for failure to perform the duties required of him.

SOURCES: Codes, 1942, § 4575-06; Laws, 1960, ch. 141, § 6, eff from and after passage (approved April 21, 1960).

§ 75-33-13. Employees; qualifications of agents.

Each employee assigned to serve as agent under this article shall have knowledge of the diseases of meat-producing animals, and shall be versed in the conditions that affect the wholesomeness of animal-food products. An appropriate standard of fitness for such agents shall be maintained by the commissioner.

SOURCES: Codes, 1942, § 4575-07; Laws, 1960, ch. 141, § 7, eff from and after passage (approved April 21, 1960).

§ 75-33-15. Employees; authority to enter and examine establishment.

Any duly authorized agent or employee of the commissioner may at any time enter any establishment and examine the same, to ascertain whether the provisions of this article are being observed.

SOURCES: Codes, 1942, § 4575-08; Laws, 1960, ch. 141, § 8, eff from and after passage (approved April 21, 1960).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 12.
CJS. 36A C.J.S., Food § 19.

§ 75-33-17. Unlawful to prevent entrance and examination of establishment.

It is unlawful to hinder, impede, or prevent any duly authorized agent or employee of the department from entering any establishment in the performance of his duty, or from making any examination duly ordered in enforcing this article.

SOURCES: Codes, 1942, § 4575-09; Laws, 1960, ch. 141, § 9, eff from and after passage (approved April 21, 1960).

§ 75-33-19. Designation of animal, meat or meat-products found to be fit for food.

Any agent authorized under this article to examine, may, under the rules and regulations prescribed by the commissioner, mark, stamp, or otherwise designate, any animal or meat or meat-food product found on examination to be wholesome and fit for food.

SOURCES: Codes, 1942, § 4575-10; Laws, 1960, ch. 141, § 10, eff from and after passage (approved April 21, 1960).

§ 75-33-21. Animal, meat or meat-products found unwholesome.

If, upon examination of any establishment, any diseased animal, or any unwholesome meat, or any unwholesome meat-food product is found, such animal or meat or product shall be condemned, properly marked or designated, and treated in such a way it cannot thereafter be used for food.

SOURCES: Codes, 1942, § 4575-11; Laws, 1960, ch. 141, § 11, eff from and after passage (approved April 21, 1960).

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 3, 49, 50, 52 et seq.

CJS. 36A C.J.S., Food § 24.

§ 75-33-23. Unsanitary establishment or equipment; reports; notice; suspension or revocation of license on failure to remedy; appeals.

If, upon examination, it is found that any establishment, or any part of an establishment, or any equipment, is in an unclean or unsanitary condition or is being conducted or used in such a manner as to make it probable that the meat or meat-food products therein or produced therein may be rendered unwholesome, or is being conducted or used in violation of this article, the agent making such examination shall report the unlawful condition to the commissioner, and shall at the same time notify in writing, the owner, lessee, or manager of the establishment.

Upon receipt of such report, the commissioner shall notify the proper owner, lessee, or manager of the result of the examination, and direct that the unlawful condition be remedied within the time specified in the notice: Provided, that the time so specified shall not be less than five (5) days, unless the unlawful condition mentioned in said notice is of such character and nature as, in the opinion of the commissioner, can be removed immediately, or its continued existence shall be a hazard and a danger to the health of the community.

If, upon the expiration of the time specified in the notice, the condition so reported to exist shall not have remedied, the commissioner may order the license suspended or revoked and the establishment closed. It is unlawful to operate an establishment, or any part thereof, which has been closed and the license suspended or revoked by the commissioner, until the unlawful condition reported to exist has been remedied to the satisfaction of the commissioner.

Any person aggrieved with the order of the commissioner, or any of his lawful and duly authorized agents, shall have immediate recourse by any appeal to the chancery court of the jurisdiction in which the establishment may be located. The chancery court shall have and it is hereby given full jurisdiction to hear and determine the appeal and enter any and all appropriate orders in term time or in vacation.

SOURCES: Codes, 1942, § 4575-12; Laws, 1960, ch. 141, § 12, eff from and after passage (approved April 21, 1960).

Cross References — Jurisdiction of chancery court, generally, see § 9-5-81.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 3, 49, 50, 52 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 75-33-25. Unlawful acts or omissions by agent or meat-hygiene agent.

It is unlawful for any agent of the commissioner, or any meat-hygiene agent:

1. To approve or pass any diseased animal intended to be slaughtered for food, or any unwholesome meat, or any unwholesome meat-food product;
2. To fail to condemn and mark, and cause to be rendered unfit for food, any diseased animal, unwholesome meat, or unwholesome meat-food product, found on examination of any establishment to be unfit for food;

3. To fail to report as required any violation of this article;

4. Directly or indirectly to accept or agree to accept anything of value, monetary or otherwise, given or offered to such agent to influence him in the discharge of his duties.

SOURCES: Codes, 1942, § 4575-13; Laws, 1960, ch. 141, § 13, eff from and after passage (approved April 21, 1960).

Cross References — Penalties, see § 75-33-37.

§ 75-33-27. Gifts, etc., to agents or employees prohibited, when.

It is unlawful to give or offer to give, directly or indirectly, to an agent or employee of the commissioner, or to an approved agent, anything of value, monetary or otherwise, with intent to influence such agent or employee in the discharge of his duties under the provisions of this article.

SOURCES: Codes, 1942, § 4575-14; Laws, 1960, ch. 141, § 14, eff from and after passage (approved April 21, 1960).

Cross References — Penalties, see § 75-33-37.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Bribery § 1 et seq.

§ 75-33-29. Acts constituting violations.

It shall be unlawful and a violation of this article for any person, without specific authority in writing from the commissioner:

(a) To make or duplicate or reproduce or use or possess any stamp, mark, tag, certificate, or emblem in imitation of an official state stamp, mark, tag, certificate, or emblem that is used, or that is authorized to be used, by the commissioner for stamping, marking, or otherwise identifying meats, meat-food products and poultry, as having been inspected and passed or otherwise approved as being wholesome and fit for food.

(b) To affix or attach any stamp, brand, emblem, tag, or other marking to any meat, meat-food product or poultry, or to any container or wrapping or covering of any meat-product, meat or poultry, indicating or suggesting that the meat, meat-food product or poultry, was slaughtered, manufactured, or prepared under inspection, unless the stamp, brand, emblem, tag, or other marking shall have been previously approved and the use thereof authorized by the commissioner.

SOURCES: Codes, 1942, § 4575-15; Laws, 1960, ch. 141, § 15, eff from and after passage (approved April 21, 1960).

Cross References — Penalties, see § 75-33-37.

JUDICIAL DECISIONS

1. In general.

Sections 75-33-1 et seq. were enacted for the purpose of licensing and regulating persons engaged in the business of manufacturing, slaughtering and preparing animals to be used for meat and meat-food products to be sold, and do not apply to wholesome meat accidentally killed and prepared for the owner's use. King v. Mississippi Power & Light Co., 244 Miss. 486, 142 So. 2d 222 (1962).

§ 75-33-31. Grading and inspection services; establishment of grades and quality; minimum standards.

Any person engaged in any of the businesses covered by this article may obtain from the commissioner a grading service and/or inspection service of the products of his business and the commissioner is hereby authorized and directed to provide such service to any person applying for same. The commissioner is authorized to establish grades and quality of the carcasses, or the parts thereof, of cattle, sheep, goats, other ruminants, rabbits and poultry, but each such grade or quality shall meet the minimum standards for the like grade or quality as required by the United States Department of Agriculture. However, the commissioner may, in his discretion, establish a grade of lower quality or designation than is now recognized by the United States Department of Agriculture, but such grade and quality so established and designated shall be clearly marked and with such identification as to avoid any confusion with grades or qualities as designated by the U. S. Department of Agriculture. However, no grade or quality shall be established or designated which will permit the sale of any meat, meat-food products or poultry unfit for human consumption.

SOURCES: Codes, 1942, § 4575-16; Laws, 1960, ch. 141, § 16, eff from and after passage (approved April 21, 1960).

Cross References — Advertising by person receiving grading and inspection services, see § 75-33-35.

§ 75-33-33. Additional inspections and grading service; agreements; federal financial assistance; inspection of plants not federally inspected; training of inspectors; reimbursement of state for inspection services by certain plants.

Any person desiring inspection service over and above the inspection service normally provided by the commissioner for sanitary purposes, and any person desiring a grading service as authorized by this article, shall pay the commissioner for such services. The person requesting such services shall pay the commissioner a sum sufficient to cover the salary or wages of the inspector, or the grader, plus necessary travel and other authorized expenses, and a reasonable sum for administration expenses. All expenses to be paid hereunder shall be that sum agreed upon with the commissioner.

The commissioner is hereby authorized and empowered to recognize and accept any bona fide agreements and arrangements now in existence, or that may hereafter be made, between any person carrying on any business covered by this article and the proper officials of any county and/or municipality wherein local inspection service is to be provided by the county or the municipality as a condition or covenant to the establishing or operating of such business. The commissioner may, in his discretion, enter into an agreement with the appropriate agency of the United States Department of Agriculture to receive financial assistance therefrom in helping carry out the purpose of this article, and to pay a reasonable state-matching contribution as may be required.

The commissioner shall inspect for wholesomeness all plants in operation which are not under federal inspection. Except as otherwise provided herein, the state shall pay the full costs for such inspection after September 1, 1968. After July 1, 2001, the state shall pay the full costs for such inspection services of quail and rabbit processing plants. Provided that so long as funds are available which have been appropriated by the Legislature for product inspection, the commissioner may employ and train inspection personnel and assign such personnel to plants for inspection for wholesomeness. No state funds shall be used for payment of overtime or for grading. Except as otherwise provided herein for inspection services of quail and rabbits, plant management shall reimburse the Mississippi Department of Agriculture and Commerce for inspection services of ratites and other exotic animals that are not regulated by mandate under the Federal Meat Inspection Act or the Federal Poultry Products Inspection Act. Plants requesting such services must make application for voluntary inspection services and obtain an establishment "V" number.

SOURCES: Codes, 1942, § 4575-17; Laws, 1960, ch. 141, § 17; Laws, 1962, ch. 164; Laws, 1968, ch. 237, § 2; Laws, 1996, ch. 543, § 2; Laws, 2001, ch. 395, § 1, eff from and after July 1, 2001.

Cross References — Advertising by person receiving grading and inspection services, see § 75-33-35.

Federal Aspects — Federal Poultry Products Inspection Act, see 21 USCS § 451 et seq.

Federal Meat Inspection Act, see 21 USCS § 601 et seq.

§ 75-33-35. Advertising by person receiving grading and inspection services.

Any person desiring and obtaining the grading and inspection service as provided in the preceding sections, is hereby authorized to use such grades and designations of quality in advertising his products and displaying such products for sale.

SOURCES: Codes, 1942, § 4575-18; Laws, 1960, ch. 141, § 18, eff from and after passage (approved April 21, 1960).

Cross References — Grading and inspection services, see §§ 75-33-31, 75-33-33.

§ 75-33-37. Penalties.

(1) Any person who violates the provisions of this article shall be fined not more than one thousand dollars ($1,000.00) or imprisoned not more than one (1) year, or both; however, if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in Section 4(g)(8) of the U. S. Poultry Inspection Act as amended), such person shall be fined not more than ten thousand dollars ($10,000.00) or imprisoned not more than three (3) years, or both. When construing or enforcing the provisions of said sections the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(2) No carrier for hire shall be subject to the penalties of this article, other than the penalties for violation of Section 11 of the U. S. Poultry Inspection Act as amended, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this article or were otherwise not eligible for transportation under this article or unless the carrier refuses to furnish on request of a representative of the commissioner of agriculture and commerce, the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

(3) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this article shall be fined not more than five thousand dollars ($5,000.00) or imprisoned not more than three (3) years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than ten thousand dollars ($10,000.00) or imprisoned not more than ten (10) years, or both. Whoever kills any person while engaged in or on account of the performance of his official duties under this article shall be punished as provided by the general laws of this state.

SOURCES: Codes, 1942, § 4575-19; Laws, 1960, ch. 141, § 19; Laws, 1972, ch. 477, § 3, eff from and after 30 days after passage (approved May 9, 1972).

Cross References — Injunctions, generally, see § 11-13-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Federal Aspects — Poultry Products Inspection Act, see Act of August 28, 1957, P.L. 85-172, 71 Stat. 441, codified as 21 USCS § 451 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 53-57, 62 et seq.

CJS. 36A C.J.S., Food § 59 et seq.

§ 75-33-39. Powers of commissioner regarding exotic animals.

(1) The commissioner has the same right of examination, inspection, condemnation and detention of live exotic animals and carcasses, parts of carcasses, meat and meat-food products of exotic animals slaughtered and prepared for shipment in interstate commerce as the commissioner has with respect to exotic animals slaughtered and prepared for shipment in intrastate commerce.

(2) The commissioner has the same right of inspection of establishments in handling exotic animals slaughtered and prepared for shipment in interstate commerce as the commissioner has with respect to establishments handling exotic animals slaughtered and prepared for intrastate commerce.

(3) The record-keeping requirements of Section 75-33-5 that apply to persons slaughtering, preparing, buying, selling, transporting, storing or rendering in intrastate commerce apply to persons performing similar functions with exotic animals in interstate commerce.

(4) The rule-making power of the commissioner relating to animals in intrastate commerce applies to exotic animals in interstate commerce.

SOURCES: Laws, 1996, ch. 543, § 3, eff from and after July 1, 1996.

ARTICLE 3.

IMPORTED MEATS
[REPEALED].

§§ 75-33-101 through 75-33-111. Repealed.

Repealed by Laws, 1997, ch. 312, § 1 eff from and after July 1, 1997.

§ 75-33-101. [Codes, 1942, § 4575-31; Laws, 1964, ch. 440, § 1]

§ 75-33-103. [Codes, 1942, § 4575-32; Laws, 1964, ch. 440, § 2]

§ 75-33-105. [Codes, 1942, § 4575-33; Laws, 1964, ch. 440, § 3]

§ 75-33-107. [Codes, 1942, § 4575-34; Laws, 1964, ch. 440, § 4]

§ 75-33-109. [Codes, 1942, § 4575-35; Laws, 1964, ch. 440, § 5]

§ 75-33-111. [Codes, 1942, §§ 4575-36, 4575-37; Laws, 1964, ch. 440, §§ 6, 7]

Editor's Note — Former § 75-33-101 related to labeling of imported meats required.

Former § 75-33-103 related to display of sign in lieu label.

Former § 75-33-105 related to origin of meat to be included in bids to tax-supported institutions; rejection of foreign meats authorized.

Former § 75-33-107 related to regulation and enforcement by board of health and agriculture department.

Former § 75-33-109 related to the construction of this article.

Former § 75-33-111 related to penalties for failure to comply with the provisions of this article.

CHAPTER 35

Meat Inspection

Article 1. Inspection Requirements; Adulteration and Misbranding 75-35-1
Article 3. Meat Processors and Related Industries 75-35-101
Article 5. Federal and State Cooperation 75-35-201
Article 7. Auxiliary Provisions 75-35-301

ARTICLE 1.

INSPECTION REQUIREMENTS; ADULTERATION AND MISBRANDING.

SEC.
75-35-1. Short title.
75-35-3. Definitions.
75-35-5. Legislative finding.
75-35-7. Inspection of cattle and other equine prior to entry into slaughtering establishments; separation and slaughtering of diseased animals; commissioner authorized to examine and inspect for methods of slaughtering and to provide for suspension of inspection services where animals slaughtered in inhumane manner.
75-35-8. Humane methods of slaughtering and handling.
75-35-9. Post-mortem examination and labeling of carcasses; destruction of condemned carcasses; reinspection.
75-35-11. Examination of carcasses brought into slaughtering or similar establishments, and of products issued therefrom or returned thereto; limitation on entry of carcasses or products into inspected establishments.
75-35-13. Inspection of products in slaughtering or similar establishments; access; inspection marks or labels; destruction of condemned products.
75-35-15. Labeling of receptacles or covering of meat or meat food products; labeling requirements generally; standards of identity or fill; false or misleading labels.
75-35-17. Sanitary inspection and regulation of slaughtering or similar establishments; duty of commissioner with respect to adulterated meat or meat food products.
75-35-19. Examination of animals and meat products thereof slaughtered or prepared during nighttime.
75-35-21. Prohibitions with respect to slaughtering, preparation, sale, transportation, adulteration or misbranding of carcasses or meat food products.
75-35-23. Unlawful manufacture, forgery, adulteration or unauthorized use of marks, labels or other identification devices or certificates; false statements or representations.
75-35-25. Labeling and preparation of carcasses of horses and mules.
75-35-27. Appointment and duties of inspectors.
75-35-29. Bribery of inspectors or other officers; acceptance of gifts.
75-35-31. Exemptions from inspection requirements; compliance with sanitary regulations; application of adulteration and misbranding provisions to products not required to be inspected.
75-35-33. Regulations prescribing conditions for storage and handling.

§ 75-35-1. Short title.

This chapter shall be designated as the “Mississippi Meat Inspection Law of 1968.”

SOURCES: Codes, 1942, § 4575-185, Laws, 1968, ch. 245, § 33, eff from and after July 1, 1968.

Cross References — Regulation of animal and poultry by-products disposal or rendering plants, see § 41-51-1 et seq.

Sale and inspection of food and drugs, generally, see § 75-29-1 et seq.

Meat, meat-food and poultry regulation and inspection, see § 75-33-1 et seq.

Exemption from liability of certain donors of food, see § 95-7-1 et seq.

Federal Aspects — Meat inspection, see 21 USCS § 601 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 3 et seq.

CJS. 36A C.J.S., Food §§ 4, 30 et seq.

§ 75-35-3. Definitions.

As used in this chapter, except as otherwise specified, the following terms shall have the meanings stated below:

(a) The term "commissioner" means the "commissioner of agriculture and commerce of the State of Mississippi", or his duly authorized deputies.

(b) The term "firm" means any partnership, association, or other unincorporated business organization.

(c) The term "meat broker" means any person, firm, or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines on commission, or otherwise negotiating purchases or sales of such item or products other than for his own account or as an employee of another person, firm, or corporation.

(d) The term "renderer" means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines, except rendering conducted under inspection under this article.

(e) The term "animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines.

(f) The term "unfit for human food" means as defined in the "Meat, Meat-Food and Poultry Regulation and Inspection Law of 1960", appearing in subsection (c) of Section 75-33-3, Mississippi Code of 1972.

(g) The term "meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the commissioner under such conditions as he may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

(h) The term "capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the commissioner to deter its use as human food, or it is naturally inedible by humans.

(i) The term "prepare" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

(j) The term "adulterated" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such item or product does not ordinarily render it injurious to health;

(2)(A) if it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the commissioner, make such item or product unfit for human food;

(B) if it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of Section 408 of the Federal Food, Drug, and Cosmetic Act, as amended;

(C) if it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act, as amended;

(D) if it bears or contains any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug, and Cosmetic Act: provided, that an article which is not adulterated under clause (B), (C), or (D) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such item or product is prohibited by regulations of the commissioner in establishments at which inspection is maintained under this article;

(3) if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(5) if it is, in whole or in part, the product of an animal which has died otherwise than by slaughter; or which was diseased or was in a dying condition at the time of slaughter;

(6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act;

(8) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

(9) if it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

(k) The term "misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) if its labeling is false or misleading in any particular;

(2) if it is offered for sale under the name of another food;

(3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) if its container is so made, formed, or filled as to be misleading;

(5) if in a package or other container unless it bears a label showing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (B) of this subparagraph (5), reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the commissioner.

(6) if any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) if it purports to be or is represented as a food for which a definition standard of identity or composition has been prescribed by regulations of the commissioner under Section 75-35-15 unless (A) it conforms to such definition and standard, and (B) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) if it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the commissioner under Section 75-35-15, and it falls below the standard of fill

of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) if it is not subject to the provisions of subparagraph (7), unless its label bears (A) the common or usual name of the food, if any there be, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the commissioner, be designated as spices, flavorings, and colorings without naming each: provided, that to the extent that compliance with the requirements of clause (B) of this subparagraph (9) is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the commissioner;

(10) if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the commissioner, after consultation with the secretary of agriculture of the United States, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(11) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: provided, that, to the extent that compliance with the requirements of this subparagraph (11) is impracticable, exemptions shall be established by regulations promulgated by the commissioner; or

(12) if it fails to bear, directly thereon or on its container, as the commissioner may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the commissioner may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the item or product in a wholesome condition.

(*l*) The term "label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any item or product.

(m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any item or product or any of its containers or wrappers, or (2) accompanying such item or product.

(n) The term "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907 (34 Stat 1260), as amended by the Wholesome Meat Act (8 Stat 584).

(o) The term "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat 1040), and acts amendatory thereof or supplementary thereto.

(p) The term "pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the Federal Food, Drug, and Cosmetic Act.

(q) The term "official mark" means the official inspection legend or any other symbol prescribed by regulations of the commissioner to identify the status of any product or animal under this chapter.

(r) The term "official inspection legend" means any symbol prescribed by regulations of the commissioner showing that an item or product was inspected and passed in accordance with this chapter.

(s) The term "official certificate" means any certificate prescribed by regulations of the commissioner for issuance by an inspector or other person performing official functions under this chapter.

(t) The term "official device" means any device prescribed or authorized by the commissioner for use in applying any official mark.

SOURCES: Codes, 1942, § 4575-151; Laws, 1968, ch. 245, § 1, eff from and after July 1, 1968.

Federal Aspects — Federal Food, Drug, and Cosmetic Act, see 21 USCS § 301 et seq.

Federal Meat Inspection Act, as amended by Wholesome Meat Act, see 21 USCS § 601 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 3 et seq.

CJS. 36A C.J.S., Food §§ 4, 30 et seq.

§ 75-35-5. Legislative finding.

Meat and meat food products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged products can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged products, to the detriment of consumers and the public generally. It is hereby found that regulation by the commissioner and cooperation by this state and the United States as contemplated by this chapter are appropriate to protect the health and welfare of consumers and otherwise effectuate the purposes of this chapter.

SOURCES: Codes, 1942, § 4575-152; Laws, 1968, ch. 245, § 2, eff from and after July 1, 1968.

§ 75-35-7. Inspection of cattle and other equine prior to entry into slaughtering establishments; separation and slaughtering of diseased animals; commissioner authorized to examine and inspect for methods of slaughtering and to provide for suspension of inspection services where animals slaughtered in inhumane manner.

(a) For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equine before they shall be allowed to enter into any slaughtering, packing, meat canning, rendering, or similar establishment in this state in which slaughtering and preparation of meat and meat food products of such animals are conducted; and all cattle, sheep, swine, goats, horses, mules, and other equine found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, horses, mules, or other equine, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, horses, mules, or other equine shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the commissioner as herein provided for.

(b) For the purpose of preventing the inhumane slaughtering of livestock, the commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules and other equine are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this article. The commissioner may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be suspended temporarily at a slaughtering establishment if the commissioner finds that any cattle, sheep, swine, ratites, nontraditional livestock, rabbits, goats, horses, mules or other equine have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with Sections 75-35-21(d) and 75-35-8 until the establishment furnishes assurances satisfactory to the commissioner that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.

SOURCES: Codes, 1942, § 4575-153; Laws, 1968, ch. 245, § 3; Laws, 2006, ch. 345, § 2, eff from and after July 1, 2006.

Cross References — Refusal or withdrawal of inspection services, see § 75-35-301.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 12.
CJS. 36A C.J.S., Food § 19.

§ 75-35-8. Humane methods of slaughtering and handling.

(1) For purposes of this chapter, the following methods of slaughtering and handling are declared to be humane:

(a) In the case of cattle, calves, horses, mules, sheep, swine, ratites, nontraditional livestock, rabbits and other livestock, all animals are to be rendered insensible to pain by a single blow or gunshot or by an electrical, chemical or other means which is rapid and effective before being shackled, hoisted, thrown, cast or cut; or

(b) By slaughtering and handling in connection with such slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

(2) In addition to the methods prescribed in subsection (1) of this section, the commissioner may designate as humane any methods of slaughtering and handling which have been so designated by the United States Secretary of Agriculture on or before April 7, 1981, pursuant to United States Code Section 7-1904. The commissioner is further authorized to designate as humane other methods of slaughtering and handling which have been demonstrated by research, investigation and experimentation to be humane with reference to the speed and scope of slaughtering operations and with reference to other existing methods and then current scientific knowledge.

SOURCES: Laws, 2006, ch. 345, § 1, eff from and after July 1, 2006.

§ 75-35-9. Post-mortem examination and labeling of carcasses; destruction of condemned carcasses; reinspection.

For the purposes hereinbefore set forth, the commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post-mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this state in which such products are prepared. The carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as "Inspected and Passed", or appropriate stamp or markings. Said inspectors shall label, mark, stamp, or tag as "Inspected and Condemned", or appropriate stamp or markings, all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector. The commissioner may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof. Said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated, and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector; and the commissioner may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof.

SOURCES: Codes, 1942, § 4575-154; Laws, 1968, ch. 245, § 4, eff from and after July 1, 1968.

Cross References — Refusal or withdrawal of inspection services, see § 75-35-301.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 12, 23 et seq.

CJS. 36A C.J.S., Food §§ 19, 38, 39.

§ 75-35-11. Examination of carcasses brought into slaughtering or similar establishments, and of products issued therefrom or returned thereto; limitation on entry of carcasses or products into inspected establishments.

The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, horses, mules, and other equines or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this article is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products. The foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The commissioner may limit the entry of carcasses, part of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this article is maintained, under such conditions as he may prescribe to assure that allowing the entry of such items or products into such inspected establishments will be consistent with the purposes of this chapter.

SOURCES: Codes, 1942, § 4575-155; Laws, 1968, ch. 245, § 5, eff from and after July 1, 1968.

Cross References — Withdrawal or refusal of inspection services, see § 75-35-301.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 12.
CJS. 36A C.J.S., Food § 19.

§ 75-35-13. Inspection of products in slaughtering or similar establishments; access; inspection marks or labels; destruction of condemned products.

For the purposes hereinbefore set forth, the commissioner shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products prepared in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where such products are prepared, and for the purposes of an examination and inspection said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment. Said inspectors shall mark, stamp, tag, or label as "Mississippi inspected and passed" or appropriately mark all such products found to be not adulterated; and said inspectors shall label, mark, stamp, or tag as "Mississippi inspected and condemned" or appropriately mark all such products found adulterated. All such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the commissioner may remove inspectors from any establishment which fails to so destroy such condemned meat food products.

SOURCES: Codes, 1942, § 4575-156; Laws, 1968, ch. 245, § 6, eff from and after July 1, 1968.

Cross References — Withdrawal or refusal of inspection services, see § 75-35-301.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 12.
CJS. 36A C.J.S., Food § 19.

§ 75-35-15. Labeling of receptacles or covering of meat or meat food products; labeling requirements generally; standards of identity or fill; false or misleading labels.

(1) When any meat or meat food product has been inspected as hereinbefore provided and marked "Mississippi inspected and passed" or appropriate marking shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this chapter is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been "Mississippi inspected and passed" or appropriate marking under the provisions of this chapter, and no inspection and examination of meat or meat food products

deposited or enclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this chapter is maintained shall be deemed to be complete until such meat or meat food products have been sealed or enclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(2) All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this chapter and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the commissioner may require, the information required under paragraph (k) of Section 75-35-3.

(3) The commissioner, whenever he determines such action is necessary for the protection of the public, may prescribe: (1) the styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any products or animals subject to this article or Article 3 of this chapter; (2) definitions and standards of identity or composition for items subject to this article and standards of fill of container for such products not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act, or under the Federal Meat Inspection Act, and there shall be consultation between the commissioner and the secretary of agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(4) No item or product subject to this article shall be sold or offered for sale by any person, firm, or corporation, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the commissioner, are permitted.

(5) If the commissioner has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any item subject to this article is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the commissioner, such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the commissioner so directs, be withheld pending hearing and final determination by the commissioner. Any party aggrieved by such final determination may, within thirty (30) days after receipt of notice of such final determination, effect an appeal therefrom to the chancery court of the county in which such party resides or in which the principal place of his business is domiciled; and, on appeal, such chancery court shall affirm, modify, or set aside the commissioner's final determination.

SOURCES: Codes, 1942, § 4575-157; Laws, 1968, ch. 245, § 7, eff from and after July 1, 1968.

Cross References — Penalty for violations, see § 75-35-311.

Federal Aspects — Federal Food, Drug, and Cosmetic Act, see 21 USCS § 301 et seq.

Federal Meat Inspection Act, see 21 USCS § 601 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 23 et seq.

CJS. 36A C.J.S., Food § 38, 39.

§ 75-35-17. Sanitary inspection and regulation of slaughtering or similar establishments; duty of commissioner with respect to adulterated meat or meat food products.

The commissioner shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared as may be necessary to inform himself concerning the sanitary conditions of the same, and to prescribe the rules and regulations of sanitation under which such establishments shall be maintained. Where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, he shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "Mississippi inspected and passed" or appropriately marked.

SOURCES: Codes, 1942, § 4575-158, Laws, 1968, ch. 245, § 8, eff from and after July 1, 1968.

Cross References — Refusal or withdrawal of inspection services, see § 75-35-301.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 12, 19.

CJS. 36A C.J.S., Food § 19.

§ 75-35-19. Examination of animals and meat products thereof slaughtered or prepared during nighttime.

The commissioner shall cause an examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines, and the food products thereof, slaughtered and prepared in the establishments hereinbefore described to be made during the nighttime as well as during the daytime when the slaughtering of said cattle, sheep, swine, goats, horses, mules, and other equines, or the preparation of said food products is conducted during the nighttime.

SOURCES: Codes, 1942, § 4575-159, Laws, 1968, ch. 245, § 9, eff from and after July 1, 1968.

Cross References — Refusal or withdrawal of inspection services, see § 75-35-301.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 12.
CJS. 36A C.J.S., Food § 38, 39.

§ 75-35-21. Prohibitions with respect to slaughtering, preparation, sale, transportation, adulteration or misbranding of carcasses or meat food products.

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, horses, mules, or other equine, or any carcasses, parts of carcasses, meat or meat food products of any such animals:

(a) Slaughter any such animals or prepare any such products which are capable of use as human food, at any establishment preparing such articles, except in compliance with the requirements of this chapter;

(b) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, (i) any such products which (1.) are capable of use as human food, and (2.) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or (ii) any items required to be inspected under this article unless they have been so inspected and passed;

(c) Do, with respect to any such items which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such items to be adulterated or misbranded;

(d) Slaughter or handle in connection with such slaughter any such animals in any manner not declared to be humane under Section 75-35-8.

SOURCES: Codes, 1942, § 4575-160, Laws, 1968, ch. 245, § 10; Laws, 2006, ch. 345, § 3, eff from and after July 1, 2006.

Cross References — Penalty for violations, see § 75-35-311.

JUDICIAL DECISIONS

1. Evidence sufficient.

Evidence was sufficient to show that meat processor had transported adulterated meat where the testimony showed that the cooler in which the quarters were transported contained blood stains and meat particles, the bottom of the cooler was rusty and dirty, the carcass was touching some of this filth, photographs were introduced that showed the blood and particles in the cooler, the quarters were placed on a wool blanket and stacked on top of each other including the second set of beef carcasses which received no inspection. Slay v. Spell, 828 So. 2d 1257 (Miss. Ct. App. 2001), writ of certiorari dismissed by 2002 Miss. LEXIS 352 (Miss. Oct. 24, 2002).

RESEARCH REFERENCES

ALR. Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property. 71 A.L.R.4th 511.

Am Jur. 35A Am. Jur. 2d, Food §§ 20, 24, 25.

CJS. 36A C.J.S., Food § 41 et seq.

§ 75-35-23. Unlawful manufacture, forgery, adulteration or unauthorized use of marks, labels or other identification devices or certificates; false statements or representations.

(1) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the commissioner.

(2) No person, firm, or corporation shall

(a) forge any official device, mark, or certificates;

(b) without authorization from the commissioner, use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(c) contrary to the regulations prescribed by the commissioner, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(d) knowingly possess, without promptly notifying the commissioner, or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(e) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the commissioner; or

(f) knowingly represent that any item or product has been inspected and passed, or exempted, under this chapter when, in fact, it has, respectively, not been so inspected and passed, or exempted.

SOURCES: Codes, 1942, § 4575-161, Laws, 1968, ch. 245, § 11, eff from and after July 1, 1968.

Cross References — Penalty for violations, see § 75-35-311.

§ 75-35-25. Labeling and preparation of carcasses of horses and mules.

No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the commissioner to show the kinds of animals from which they were derived. When required by the commissioner with respect to establishments at which inspection is maintained under this article, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, or goats are slaughtered or their carcasses, parts thereof, meats or meat food products are prepared.

SOURCES: Codes, 1942, § 4575-162, Laws, 1968, ch. 245, § 12, eff from and after July 1, 1968.

Cross References — Penalty for violations, see § 75-35-311.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 23 et seq.

CJS. 36A C.J.S., Food § 38, 39.

§ 75-35-27. Appointment and duties of inspectors.

The commissioner shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared. Said inspectors shall refuse to stamp, mark, tag or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this chapter and by the rules and regulations to be prescribed by said commissioner. Said commissioner shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this chapter, and all inspections and examinations made under this chapter shall be such and made in such manner as described in the rules and regulations prescribed by said commissioner not inconsistent with the provisions of this chapter.

SOURCES: Codes, 1942, § 4575-163, Laws, 1968, ch. 245, § 13, eff from and after July 1, 1968.

§ 75-35-29. Bribery of inspectors or other officers; acceptance of gifts.

Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, deputy inspector, chief inspector, or any other officer or employee of this state authorized to perform any of the duties prescribed by this chapter or by the rules and regulations of the commissioner, any money or other thing of value, with intent to influence said inspector, deputy inspector, chief inspector, or other officer or employee of this state in the discharge of any duty herein provided for, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than Five Thousand Dollars ($5,000.00), nor more than Ten Thousand Dollars ($10,000.00) and by imprisonment not less than one (1) year nor more than three (3) years. Any inspector, deputy inspector, chief inspector, or other officer or employee of this state authorized to perform any of the duties prescribed by this chapter who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00) and by imprisonment not less than one (1) year nor more than three (3) years.

SOURCES: Codes, 1942, § 4575-164, Laws, 1968, ch. 245, § 14; Laws, 2002, ch. 394, § 1, eff from and after July 1, 2002.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Bribery § 1 et seq.

§ 75-35-31. Exemptions from inspection requirements; compliance with sanitary regulations; application of adulteration and misbranding provisions to products not required to be inspected.

(1) The provisions of this article requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not (a) apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor (b) to the custom slaughter by any person, firm, or corporation of cattle, sheep, swine, or goats, delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food

products of such animals, exclusively for use, in the household of such owner, by him, and members of his household and his nonpaying guests and employees: provided, that such custom slaughterer does not engage in the business of buying or selling any carcasses, parts of carcasses, meat or meat food products of any cattle, sheep, swine, goats, or equines, capable of use as human food.

(2) The provisions of this chapter requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such items or products to consumers at such establishments.

(3) The slaughter of animals and preparation of items or products referred to in subsections (1)(b) and (2) of this section shall be conducted in accordance with such sanitary conditions as the commissioner may by regulations prescribe. Violation of any such regulation is prohibited.

(4) The adulteration and misbranding provisions of this article, other than the requirement of the inspection legend, shall apply to items or products which are not required to be inspected under this section.

SOURCES: Codes, 1942, § 4575-165, Laws, 1968, ch. 245, § 15, eff from and after July 1, 1968.

Cross References — Penalty for violations, see § 75-35-311.

§ 75-35-33. Regulations prescribing conditions for storage and handling.

The commissioner may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the commissioner deems such action necessary to assure that such items or products will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is prohibited.

SOURCES: Codes, 1942, § 4575-166, Laws, 1968, ch. 245, § 16, eff from and after July 1, 1968.

Cross References — Penalty for violations, see § 75-35-311.

RESEARCH REFERENCES

CJS. 36A C.J.S., Food § 48.

ARTICLE 3.

MEAT PROCESSORS AND RELATED INDUSTRIES.

SEC.
75-35-101. Inspection not to be provided for establishments preparing carcasses or products not intended for use as human food; denaturation or other identification of certain items.
75-35-103. Records required to be kept; access to places of business; examination of facilities, inventory and records; copies of records; samples of inventory.
75-35-105. Registration of name, business address and trade names with commissioner.
75-35-107. Regulation of transactions in, or transportation of, dead, dying or diseased animals to prevent use of parts or products as human food.

§ 75-35-101. Inspection not to be provided for establishments preparing carcasses or products not intended for use as human food; denaturation or other identification of certain items.

Inspection shall not be provided under Article 1 of this chapter at any establishment for the slaughter of cattle, sheep, swine, goats, horses, mules, or other equines, or the preparation of any carcasses or parts or products of such animals, which are not intended for use as human food, but such products shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the commissioner to deter their use for human food. No person, firm, or corporation shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in commerce, any carcasses, parts thereof, meat or meat food products of any such animals, which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the commissioner or are naturally inedible by humans.

SOURCES: Codes, 1942, § 4575-167, Laws, 1968, ch. 245, § 17, eff from and after July 1, 1968.

Cross References — Regulation of animal and poultry by-products disposal or rendering plants, see § 41-51-1 et seq.

Penalty for violations, see § 75-35-311.

Federal Aspects — Meat inspection, meat processors and related industries, see 21 USCS § 641 et seq.

§ 75-35-103. Records required to be kept; access to places of business; examination of facilities, inventory and records; copies of records; samples of inventory.

(1) The following classes of persons, firms, and corporations shall keep such records as will fully and correctly disclose all transactions involved in their businesses; and all persons, firms, and corporations subject to such

requirements shall, at all reasonable times, upon notice by a duly authorized representative of the commissioner afford such representative and any duly authorized representative of the secretary of agriculture of the United States accompanied by such representative of the commissioner access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment when requested of the fair market value thereof:

(a) Any persons, firms, or corporations that engage in the business of slaughtering any cattle, sheep, swine, goats, horses, mules, or other equines, or preparing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any such animals, for use as human food or animal food;

(b) Any persons, firms, or corporations that engage in the business of buying or selling (as meat brokers, wholesalers or otherwise), or transporting, or storing, any carcasses, or parts or products of carcasses, of any such animals;

(c) Any persons, firms, or corporations that engage in business, as renderers, or engage in the business of buying, selling, or transporting, any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules, or other equines, or parts of the carcasses of any such animals that died otherwise than by slaughter.

(2) Any record required to be maintained by this section shall be maintained for such period of time as the commissioner may by regulations prescribe.

SOURCES: Codes, 1942, § 4575-168, Laws, 1968, ch. 245, § 18, eff from and after July 1, 1968.

Cross References — Penalty for violations, see § 75-35-311.

§ 75-35-105. Registration of name, business address and trade names with commissioner.

No person, firm, or corporation shall engage in business, as a meat broker, renderer, or animal food manufacturer, or engage in business as a wholesaler of any carcasses, or parts or products of the carcasses, of any cattle, sheep, swine, goats, horses, mules, or other equines, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such items or products, or engage in the business of buying, selling, or transporting, any dead, dying, disabled, or diseased animals of the specified kinds, or parts of the carcasses of any such animals that died otherwise than by slaughter, unless, when required by regulations of the commissioner, he has registered with the commissioner his name, and the address of each place of business at which, and all trade names under which, he conducts such business.

SOURCES: Codes, 1942, § 4575-169, Laws, 1968, ch. 245, § 19, eff from and after July 1, 1968.

Cross References — Penalty for violations, see § 75-35-311.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 11.
CJS. 36A C.J.S., Food § 19.

§ 75-35-107. Regulation of transactions in, or transportation of, dead, dying or diseased animals to prevent use of parts or products as human food.

No person, firm, or corporation engaged in the business of buying, selling, or transporting, dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation, any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules or other equines, or parts of the carcasses of any such animals that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the commissioner may prescribe to assure that such animals, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes.

SOURCES: Codes, 1942, § 4575-170, Laws, 1968, ch. 245, § 20, eff from and after July 1, 1968.

ARTICLE 5.

FEDERAL AND STATE COOPERATION.

SEC.
75-35-201. Department of agriculture and commerce to cooperate with secretary of agriculture of United States; acceptance of advisory assistance; expenditure of public funds.

§ 75-35-201. Department of agriculture and commerce to cooperate with secretary of agriculture of United States; acceptance of advisory assistance; expenditure of public funds.

(1) The department of agriculture and commerce is hereby designated as the state agency which shall be responsible for cooperating with the secretary of agriculture of the United States under the provisions of Section 301 of the Federal Meat Inspection Act and such agency is directed to cooperate with the secretary of agriculture of the United States in developing and administering the meat inspection program of this state under this chapter to assure that not later than November 15, 1969, its requirements will be at least equal to those

imposed under Titles I and IV of the Federal Meat Inspection Act and in developing and administering the program of this state under Article 3 of this chapter in such a manner as will effectuate the purposes of this chapter and said federal act.

(2) In such cooperative efforts, the department of agriculture and commerce is authorized to accept from said secretary advisory assistance in planning and otherwise developing the state program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program. The department of agriculture and commerce is further authorized to spend public funds of this state appropriated for administration of this chapter to pay fifty per centum (50%) of the estimated total cost of the cooperative program.

(3) The department of agriculture and commerce is further authorized to recommend to the said secretary of agriculture such officials or employees of this state as the department of agriculture and commerce shall designate, for appointment to the advisory committees provided for in Section 301 of the Federal Meat Inspection Act; and the department of agriculture and commerce shall serve as the representative of the governor for consultation with said secretary under paragraph (c) of this section of said act unless the governor shall select another representative.

SOURCES: Codes, 1942, § 4575-171, Laws, 1968, ch. 245, § 21, eff from and after July 1, 1968.

Federal Aspects — Section 301 of the Federal Meat Inspection Act is § 301 of the Act of March 4, 1907, as added December 15, 1967, P.L. 90-201, § 15, 81 Stat. 595, and is codified as 21 USCS § 661.

JUDICIAL DECISIONS

1. Adoption of federal meat inspection regulations.

Federal meat inspection rules and regulations, codified in 9 C.F.R § 310.25(a)(2)(v)(A), applied to the slaughterhouse owner's plant because the Mississippi Department of Agriculture and Commerce lawfully adopted the federal regulations pursuant to Miss. Code Ann. § 75-35-201(1), which required the Department to adopt standards that were at least equal to federal meat inspection regulations. Slay v. Spell, 882 So. 2d 254 (Miss. Ct. App. 2004).

ARTICLE 7.

AUXILIARY PROVISIONS.

SEC.
75-35-301. Refusal or withdrawal of inspection services; grounds; judicial review of order and determination of commissioner.
75-35-303. Detention of carcasses or meat food products by representative of commissioner pending judicial action or notification of federal authorities; duration; release.
75-35-305. Seizure and condemnation of carcasses, meat products or animals;

destruction or sale of condemned items; delivery of items to owner giving bond; chancery court proceedings; jury trial.
75-35-307. Jurisdiction of chancery courts.
75-35-309. Punishment for assaulting, killing, resisting or impeding persons while in performance of their official duties.
75-35-311. Punishment for violations for which no other criminal penalty is provided; effect of good faith; minor violations.
75-35-313. Power of commissioner to compile information, make investigations, and to require reports to be filed.
75-35-315. Attendance of witnesses and production of documentary evidence; issuance of, and obedience to, subpoenas; mandamus to compel compliance with law; depositions; witness fees.
75-35-317. Penalty for failure to give testimony or to furnish documentary evidence, making false reports, failure to file report or making of wrongful disclosure.
75-35-319. Application of law to establishments, animals and products regulated by Federal Meat Inspection Act.
75-35-321. Appropriations.
75-35-323. Repeal of existing statutes.
75-35-325. Administrative procedures concerning fines and other penalties for violations of the meat inspection law.
75-35-327. Repealed.

§ 75-35-301. Refusal or withdrawal of inspection services; grounds; judicial review of order and determination of commissioner.

The commissioner may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this chapter) refuse to provide, or withdraw, inspection service under Article 1 of this chapter with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under Article 1 because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or state court, of (1) any felony, or (2) more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. This section shall not affect in any way other provisions of this chapter for withdrawal of inspection services under Article 1 from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat or meat food products.

For the purpose of this section, a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of ten per centum (10%) or more of its voting stock or employee in a managerial or executive capacity. The determination and order of the commissioner with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within thirty (30) days after the effective date of such order in the appropriate court as provided in Section 75-35-15. Judicial review of any such order shall be upon the record made before the commissioner upon which the determination and order are based.

SOURCES: Codes, 1942, § 4575-172, Laws, 1968, ch. 245, § 22, eff from and after July 1, 1968.

Federal Aspects — Meat inspection, auxiliary provisions, see 21 USCS § 671 et seq.

§ 75-35-303. Detention of carcasses or meat food products by representative of commissioner pending judicial action or notification of federal authorities; duration; release.

Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any authorized representative of the commissioner upon any premises where it is held for purposes of, or during or after distribution, and there is reason to believe that any such item or product is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of Article 1 of this chapter or of the Federal Meat Inspection Act or the Federal Food, Drug and Cosmetic Act, or that such products or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty (20) days, pending action under Section 75-35-305 or notification of any Federal authorities having jurisdiction over such article or animal, and shall not be moved by any person, firm or corporation from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such products or animal before it is released unless it appears to the satisfaction of the commissioner that the products or animal is eligible to retain such marks.

SOURCES: Codes, 1942, § 4575-173, Laws, 1968, ch. 245, § 23, eff from and after July 1, 1968.

Federal Aspects — Federal Food, Drug, and Cosmetic Act, see 21 USCS § 301 et seq.

Federal Meat Inspection Act, see 21 USCS § 601 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 58.
CJS. 36A C.J.S., Food §§ 62, 64 et seq.

§ 75-35-305. Seizure and condemnation of carcasses, meat products or animals; destruction or sale of condemned items; delivery of items to owner giving bond; chancery court proceedings; jury trial.

(1) Any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine, that is being transported in intrastate commerce, or is held for sale in this state after such transportation, and that (a) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter, or (b) is capable of use as human food and is adulterated or misbranded, or (c) in any other way is in violation of this chapter, shall be liable to be proceeded against and seized and condemned, at any time, on a bill of complaint in the chancery court as provided in Section 75-35-307 within the jurisdiction of which the products or animal is found. If the products or animal is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the general fund of the treasury of this state, but the products or animals shall not be sold contrary to the provisions of this chapter, or the Federal Meat Inspection Act or the Federal Food, Drug, and Cosmetic Act: provided, that upon the execution and delivery of a good and sufficient bond conditioned that the products or animal shall not be sold or otherwise disposed of contrary to the provisions of this chapter, or the laws of the United States, the court may direct that such products or animal be delivered to the owner thereof subject to such supervision by authorized representatives of the commissioner as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the products or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the product or animal. The proceedings in such chancery court cases shall conform, as nearly as may be, to the usual proceedings in chancery, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be removed at the suit of and in the name of this state in the circuit court.

(2) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this chapter, or other laws.

SOURCES: Codes, 1942, § 4575-174, Laws, 1968, ch. 245, § 24, eff from and after July 1, 1968.

Federal Aspects — Federal Food, Drug, and Cosmetic Act, see 21 USCS § 301 et seq.

Federal Meat Inspection Act, see 21 USCS § 601 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food § 58.
CJS. 36A C.J.S., Food §§ 62, 64 et seq.

§ 75-35-307. Jurisdiction of chancery courts.

Except as otherwise specifically provided for in this chapter, the chancery courts are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this chapter, and shall have jurisdiction in all other kinds of cases arising under this chapter.

SOURCES: Codes, 1942, § 4575-175, Laws, 1968, ch. 245, § 25; Laws, 1997, ch. 521, § 2, eff from and after July 1, 1997.

Cross References — Jurisdiction of chancery court, generally, see § 9-5-81.
Injunctions, generally, see § 11-13-1.
Chancery court proceedings, see §§ 75-35-305, 75-35-315.

§ 75-35-309. Punishment for assaulting, killing, resisting or impeding persons while in performance of their official duties.

Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be fined not more than five thousand dollars ($5,000.00) or imprisoned not more than three (3) years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than ten thousand dollars ($10,000.00) or imprisoned not more than ten (10) years, or both. Whoever kills any person while engaged in or on account of the performance of his official duties under this chapter shall be punished as provided under general laws of this state.

SOURCES: Codes, 1942, § 4575-176, Laws, 1968, ch. 245, § 26, eff from and after July 1, 1968.

Cross References — Obstruction of justice, see §§ 97-9-55, 97-9-69, 97-9-71, 97-9-75.

§ 75-35-311. Punishment for violations for which no other criminal penalty is provided; effect of good faith; minor violations.

(1) Any person, firm, or corporation who violates any provision of this chapter for which no other criminal penalty is provided by this chapter shall upon conviction be subject to imprisonment for not more than one (1) year, or a fine of not more than one thousand dollars ($1,000.00), or both such imprisonment and fine; but if such violation involves intent to defraud, or any distribution or attempted distribution of an item or product that is adulterated

(except as defined in Section 75-35-3(j)(8)), such person, firm, or corporation shall be subject to imprisonment for not more than three (3) years or a fine of not more than ten thousand dollars ($10,000.00) or both: provided, that no person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any product or animal in violation of this chapter if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the commissioner the name and address of the person from whom he received such products or animal, and copies of all documents, if any there be, pertaining to the delivery of the products or animal to him.

(2) Nothing in this chapter shall be construed as requiring the commissioner to report for prosecution or for the institution of a bill of complaint or injunction proceedings, minor violations of this chapter whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

SOURCES: Codes, 1942, § 4575-177, Laws, 1968, ch. 245, § 27, eff from and after July 1, 1968.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Food §§ 53-57, 62 et seq.

CJS. 36A C.J.S., Food § 29 et seq.

§ 75-35-313. Power of commissioner to compile information, make investigations, and to require reports to be filed.

The commissioner shall also have power:

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, firm, or corporation engaged in intrastate commerce, and the relation thereof to other persons, firms, and corporations;

(b) To require, by general or special orders, persons, firms, and corporations engaged in intrastate commerce, or any class of them, or any of them to file with the commissioner, in such form as the commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons, firms, and corporations, of the person, firm, or corporation filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commissioner may prescribe, and shall be filed with the commissioner within such reasonable period as the commissioner may prescribe, unless additional time be granted in any case by the commissioner.

SOURCES: Codes, 1942, § 4575-178, Laws, 1968, ch. 245, § 28(a), eff from and after July 1, 1968.

§ 75-35-315. Attendance of witnesses and production of documentary evidence; issuance of, and obedience to, subpoenas; mandamus to compel compliance with law; depositions; witness fees.

(1) For the purposes of this chapter, the commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any documentary evidence of any person, firm, or corporation being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person, firm, or corporation relating to any matter under investigation. The commissioner may issue and sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

(2) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena, the commissioner may invoke the aid of any court designated in Section 75-35-307 in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(3) Any of the courts designated in Section 75-35-307 within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, firm, or corporation, issue an order requiring such person, firm, or corporation to appear before the commissioner, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) Upon the application of the attorney general of this state at the request of the commissioner, the circuit court shall have jurisdiction to issue writs of mandamus commanding any person, firm, or corporation to comply with the provisions of this chapter or any order of the commissioner made in pursuance thereof.

(5) The commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this chapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commissioner as hereinbefore provided.

(6) Witnesses summoned before the commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this state, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.

SOURCES: Codes, 1942, § 4575-179, Laws, 1968, ch. 245, § 28(b), eff from and after July 1, 1968.

Cross References — Contempt, generally, see § 9-1-17.
Mandamus proceedings, see § 11-41-1 et seq.
Subpoena for witnesses in civil cases, see § 13-3-93.
Subpoena of witnesses in criminal cases, see § 99-9-11.

§ 75-35-317. Penalty for failure to give testimony or to furnish documentary evidence, making false reports, failure to file report or making of wrongful disclosure.

(1) Any person, firm, or corporation that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the commissioner, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than one hundred dollars ($100.00) nor more than five thousand dollars ($5,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(2) Any person, firm, or corporation that shall willfully make, or cause to be made any false entry or statement of fact in any report required to be made under this chapter, or that shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, firm, or corporation subject to this chapter or that shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person, firm, or corporation, or that shall willfully remove out of the jurisdiction of this state, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, firm, or corporation or that shall willfully refuse to submit to the commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any such person, firm, or corporation in his possession or within his control, shall be deemed guilty of an offense and shall be subject, upon conviction in any court of competent jurisdiction to a fine of not less than one thousand dollars ($1,000.00) nor more than five thousand dollars ($5,000.00), or to imprisonment for a term of not more than three (3) years, or to both such fine and imprisonment.

(3) If any person, firm, or corporation required by this chapter to file any annual or special report shall fail so to do within the time fixed by the commissioner for filing the same, and such failure shall continue for thirty (30) days after notice of such default, unless for good cause shown on extension for filing same shall be granted by the commissioner, such person, firm, or corporation shall forfeit to this state the sum of one hundred dollars ($100.00) for each and every day of the continuance of such failure, which forfeiture shall be payable into the general fund of the treasury of this state, and shall be recoverable in a civil suit in the name of the state brought in the county where

the person, firm, or corporation has his or its principal office or in any county in which he or it shall do business. It shall be the duty of the attorney general of this state, the county attorney and the district attorney, under the direction of the attorney general of this state, to prosecute for the recovery of such forfeitures in the name of the State of Mississippi. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of this state.

(4) Any officer or employee of this state who shall make public any information obtained by the commissioner without his authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment, not exceeding one (1) year, or by both such fine and imprisonment, in the discretion of the court. This provision does not apply to the governor, members of the legislature, the attorney general, district attorney, county attorney or sheriff.

SOURCES: Codes, 1942, § 4575-180, Laws, 1968, ch. 245, § 28(c), eff from and after July 1, 1968.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-35-319. Application of law to establishments, animals and products regulated by Federal Meat Inspection Act.

The requirements of this chapter shall apply to persons, firms, corporation establishments, animals, and products regulated under the Federal Meat Inspection Act only to the extent provided for in Section 408 of said federal act.

SOURCES: Codes, 1942, § 4575-181, Laws, 1968, ch. 245, § 29, eff from and after July 1, 1968.

Federal Aspects — Federal Meat Inspection Act, see 21 USCS § 601 et seq.

§ 75-35-321. Appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

SOURCES: Codes, 1942, § 4575-182, Laws, 1968, ch. 245, § 30, eff from and after July 1, 1968.

§ 75-35-323. Repeal of existing statutes.

Nothing in this chapter, except for the purpose of providing for cooperation with the United States Department of Agriculture for the inspection of meat and related purposes, shall repeal or supersede any existing statutes regulating the same matters and subject.

SOURCES: Codes, 1942, § 4575-184, Laws, 1968, ch. 245, § 32, eff from and after July 1, 1968.

§ 75-35-325. Administrative procedures concerning fines and other penalties for violations of the meat inspection law.

(1) When a written complaint is made against a person for violation of any provision of this chapter or of Section 75-33-1 et seq., or any of the rules or regulations promulgated there under, the Commissioner of Agriculture, or his designee, shall conduct a full evidentiary hearing relative to the charges. The complaint shall be in writing and shall be filed in the office of the Mississippi Department of Agriculture and Commerce. The commissioner shall cause to be delivered to the accused in the manner described herein a copy of the complaint and a summons requiring the accused to file a written answer to the complaint within thirty (30) days after service of the summons and complaint upon the accused. The accused may be notified by serving a copy of the summons and complaint on the accused or any of his officers, agents or employees by personal service or by certified mail. The accused shall file with the department a written response to the complaint within the thirty-day period. If the accused fails to file an answer within such time, the commissioner or his designee may enter an order by default against the accused. If the accused has filed an answer, the matter shall be set for hearing before the commissioner or his designee.

The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. Compliance with such subpoenas may be enforced by any court of general jurisdiction in this state. The testimony of witnesses shall be upon oath or affirmation, and they shall be subject to cross-examination. The proceedings shall be recorded by a court reporter. If the commissioner or his designee determines that the complaint lacks merit, he may dismiss it. If he finds that there is substantial evidence showing that a violation of any of the statutes or regulations has been committed, he may impose any or all of the following penalties upon the accused:

(a) Levy a civil penalty in the amount of no more than One Thousand Dollars ($1,000.00) for each violation;

(b) Revoke or suspend any license, permit or privilege granted to the accused under the terms of this chapter or Section 75-33-1 et seq.;

(c) Retain product, reject equipment or facilities, slow or stop a line or refuse to allow the processing of a specifically identified product;

(d) Refuse to allow the marks of inspection to be applied to a product; or

(e) Take any other action authorized by law or regulation. The commissioner's decision shall be in writing, and it shall be delivered to the accused by any of the methods described herein for service of the summons and complaint on the accused.

(2) Either the accused or the department may appeal the decision of the commissioner to the circuit court of the county of residence of the accused or, if the accused is a nonresident of the State of Mississippi, to the Circuit Court

of the First Judicial District of Hinds County, Mississippi. The appellant shall have the obligation of having the record transcribed and filed with the circuit court. The appeal shall otherwise be governed by all applicable laws and rules affecting appeals to circuit court. If no appeal is perfected within the required time, the decision of the commissioner, or his designee, shall then become final.

(3) The decision of the circuit court may then be appealed by either party to the Mississippi Supreme Court in accordance with the existing laws and rules affecting such appeals.

SOURCES: Laws, 1997, ch. 521, § 1; Laws, 2003, ch. 491, § 1, eff from and after July 1, 2003.

§ 75-35-327. Repealed.

Repealed by Laws, 2009, ch. 321, § 11, effective March 16, 2009.

§ 75-35-327. [Laws, 2002, ch. 526, § 1, eff from and after July 1, 2002.]

Editor's Note — Laws of 2009, ch. 321, § 12, provides:

"This act shall take effect and be in force from and after the effective date of the federal rules or regulations on mandatory country of origin labeling promulgated by the U.S. Department of Agriculture."

On January 15, 2009, the U.S. Department of Agriculture, Agriculture Marketing Service, published a final rule for all covered commodities (74 FR 2658). The rule became effective on March 16, 2009.

Former § 75-35-327 mandated that any seller of unprocessed meat clearly and conspicuously indicate on the meat, its wrapping or its container, or on a display sign if the meat is sold unwrapped, the country of origin of the meat. For present similar provisions see §§ 69-1-301 et seq.

CHAPTER 37

Operation of Frozen Food Locker Plants [Repealed]

§§ 75-37-1 through 75-37-35. Repealed.

Repealed by Laws, 2000, ch. 366, § 4, eff from and after July 1, 2000.

§ 75-37-1. [Codes, 1942, § 7129-48.01; Laws, 1946, ch. 391, § 1]

§ 75-37-3. [Codes, 1942, § 7129-48.02; Laws, 1946, ch. 391, § 2]

§ 75-37-5. [Codes, 1942, § 7129-48.03; Laws, 1946, ch. 391, § 3]

§ 75-37-7. [Codes, 1942, § 7129-48.04; Laws, 1946, ch. 391, § 4]

§ 75-37-9. [Codes, 1942, § 7129-48.05; Laws, 1946, ch. 391, § 5]

§ 75-37-11. [Codes, 1942, § 7129-48.06; Laws, 1946, ch. 391, § 6]

§ 75-37-13. [Codes, 1942, § 7129-48.07; Laws, 1946, ch. 391, § 7]

§ 75-37-15. [Codes, 1942, § 7129-48.08; Laws, 1946, ch. 391, § 8]

§ 75-37-17. [Codes, 1942, § 7129-48.09; Laws, 1946, ch. 391, § 9]

§ 75-37-19. [Codes, 1942, § 7129-48.10; Laws, 1946, ch. 391, § 10]

§ 75-37-21. [Codes, 1942, § 7129-48.11; Laws, 1946, ch. 391, § 11]

§ 75-37-23. [Codes, 1942, § 7129-48.12; Laws, 1946, ch. 391, § 12]

§ 75-37-25. [Codes, 1942, § 7129-48.13; Laws, 1946, ch. 391, § 13]

§ 75-37-27. [Codes, 1942, § 7129-48.14; Laws, 1946, ch. 391, § 14]

§ 75-37-29. [Codes, 1942, § 7129-48.15; Laws, 1946, ch. 391, § 15; Laws, 1952, ch. 318]

§ 75-37-31. [Codes, 1942, § 7129-48.16; Laws, 1946, ch. 391, § 16]

§ 75-37-33. [Codes, 1942, § 7129-48.17; Laws, 1946, ch. 391, § 17]

§ 75-37-35. [Codes, 1942, § 7129-48.18; Laws, 1946, ch. 391, § 18]

Editor's Note — Former § 75-37-1 was entitled "Citation and purpose of title."

Former § 75-37-3 was entitled "Definitions."

Former § 75-37-5 was entitled "Permits."

Former § 75-37-7 was entitled "Examination of plant."

Former § 75-37-9 was entitled "Related to inspection and revocation of permit."

Former § 75-37-11 was entitled "Storing of impure food."

Former § 75-37-13 was entitled "Food not intended for human consumption."

Former § 75-37-15 was entitled "Construction of plant; equipment."

Former § 75-37-17 was entitled "Sanitation and cleanliness."

Former § 75-37-19 was entitled "Water supply, toilet facilities."

Former § 75-37-21 was entitled "Temperature required."

Former § 75-37-23 was entitled "Inspection, wrapping, identification of stored food."

Former § 75-37-25 was entitled "Warehousemen."

Former § 75-37-27 was entitled "Storage lien; liability for loss of food."

Former § 75-37-29 was entitled "Cost of administration."

Former § 75-37-31 was entitled "Rules and regulations."

Former § 75-37-33 was entitled "Employees; enforcement."

Former § 75-37-35 was entitled "Penalty."

Cross References — Sale and inspection of food and drugs, generally, see § 75-29-1 et seq.

Meat, meat-food and poultry regulation and inspection, see §§ 75-33-1 et seq.

Meat inspection, see § 75-35-1 et seq.

Warehouse receipts, generally, see § 75-7-201 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 39

Sale of Baby Chicks

Sec.	
75-39-1.	Definitions.
75-39-3.	Sale of baby chicks at auction; permit required.
75-39-5.	Application for permit.
75-39-7.	Labeling of containers.
75-39-9.	Report of sales.
75-39-11.	Regulations.
75-39-13.	Penalty for violation.

§ 75-39-1. Definitions.

The term "baby chick" as used in this chapter means any domestic fowl under the age of six (6) weeks. The term "person" includes also firms and corporations.

SOURCES: Codes, 1942, § 4863-06; Laws, 1944, ch. 247, § 6.

§ 75-39-3. Sale of baby chicks at auction; permit required.

Before any baby chicks are offered for sale at any auction or auction sale barn or community sale, except public sales conducted by farmers selling baby chicks raised on their own premises, a permit shall be granted to offer such baby chicks for sale by the livestock sanitary board or the state veterinarian.

SOURCES: Codes, 1942, § 4863-01; Laws, 1944, ch. 247, § 1.

Cross References — Penalty for violations of chapter, see § 75-39-13.

§ 75-39-5. Application for permit.

Any person who desires to offer baby chicks for sale at any auction or auction sale barn or community sale, shall apply for a permit so to do to the state veterinarian or the livestock sanitary board, on a form which shall be prescribed and furnished by the livestock sanitary board. The application shall be signed by the person who proposes to conduct such sale, together with the person who owns the property in or on which such sale is to be conducted, if the person who proposes to conduct such sales does not own such property. The application shall designate the date of the proposed sale, the number, breed, and variety of the chicks which are to be offered for sale and the person by whom they were produced, and shall be accompanied by a fee in the sum of fifteen dollars ($15.00) for each and every day or fraction thereof during or on which it is proposed to sell such baby chicks. The state livestock sanitary board or the state veterinarian are hereby authorized in its or his discretion to grant or to deny the permit requested in such application, and, if deemed necessary or advisable, to require the applicant to submit a certificate, in such form as the livestock sanitary board or the state veterinarian may prescribe, certifying that the baby chicks which are to be offered for sale are in a healthy condition and free from such diseases as the board or state veterinarian may designate.

SOURCES: Codes, 1942, § 4863-02; Laws, 1944, ch. 247, § 2.

§ 75-39-7. Labeling of containers.

Before any such chicks are offered for sale or sold, each box, crate, coop or other container shall be plainly labeled with appropriate statements designating the kind and number of chicks in each such container, the date on which such chicks were hatched and by whom hatched, and any other representations made at or prior to the time of sale relative to the purity of the breed, the freedom of such chicks from disease and such tests as shall have been made on the parent stock for pullorum disease.

SOURCES: Codes, 1942, § 4863-03; Laws, 1944, ch. 247, § 3.

Cross References — Penalty for violations of chapter, see § 75-39-13.

§ 75-39-9. Report of sales.

Within three (3) days after the sale shall have been held, the person who conducted the sale shall send a statement to the livestock sanitary board giving a complete list of the number and kind of baby chicks sold at such sale, the name and address of each purchaser, together with a copy of the representations and guarantees made in relation thereto, if any were made by the person who conducted such sale, and the person conducting such sale shall be held to have had full knowledge of the representations and guarantees made at the time of such sale and shall be as fully responsible and liable for any such representations and guarantees as is the person who sets forth such representations and guarantees on the containers as provided in Section 75-39-7.

SOURCES: Codes, 1942, § 4863-04; Laws, 1944, ch. 247, § 4.

Cross References — Penalty for violations of chapter, see § 75-39-13.

§ 75-39-11. Regulations.

The state livestock sanitary board is hereby authorized to make such rules and regulations as may be necessary to administer the provisions of this chapter and to prevent the spread of disease among poultry.

SOURCES: Codes, 1942, § 4863-05; Laws, 1944, ch. 247, § 5.

§ 75-39-13. Penalty for violation.

Any person who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars ($100.00).

SOURCES: Codes, 1942, § 4863-07; Laws, 1944, ch. 247, § 7.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 40

Importation and Sale of Animals or Birds

Article 1.	Skunks	75-40-1
Article 3.	Mississippi Bird Dealers Licensing Act	75-40-101

ARTICLE 1.

SKUNKS.

SEC.	
75-40-1.	Importation and sale of live skunks prohibited; exceptions.
75-40-3.	Penalty.

§ 75-40-1. Importation and sale of live skunks prohibited; exceptions.

It shall be unlawful for any person to import or cause to be imported into this state any live skunk, or to sell, barter, exchange or otherwise transfer any live skunk; provided, however, that the provisions of this article shall not apply to bona fide zoos or research institutions. This article shall not be construed to prohibit the sale of live skunks to persons outside the state by a resident of Mississippi who is a skunk farmer approved by the United States Department of Agriculture.

SOURCES: Laws, 1980, ch. 422, § 1(1), eff from and after passage (approved April 30, 1980).

§ 75-40-3. Penalty.

Any violation of this article shall be a misdemeanor and shall be punishable by imprisonment in the county jail for not more than ninety (90) days or by a fine not to exceed five hundred dollars ($500.00), or both.

SOURCES: Laws, 1980, ch. 422, § 1(2), eff from and after passage (approved April 30, 1980).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ARTICLE 3.

MISSISSIPPI BIRD DEALERS LICENSING ACT.

SEC.	
75-40-101.	Short title.
75-40-103.	Definitions.
75-40-105.	Misdemeanor to deal in birds without bird dealer's license.
75-40-107.	Term of license; classes; fees.
75-40-109.	Dealer's records required; duration; reports; inspection of records; grounds for license revocation.

75-40-111. Quarantine, seizure and destruction of diseased birds authorized; indemnity to owner.
75-40-113. Commissioner of agriculture and commerce to make regulations.
75-40-115. Orders of State Veterinarian; procedures.
75-40-117. Legal actions for enforcement of law, regulation or order; injunctive relief.

§ 75-40-101. Short title.

This article may be cited as the "Mississippi Bird Dealers Licensing Act."

SOURCES: Laws, 1982, ch. 308, § 1, eff from and after July 1, 1982.

§ 75-40-103. Definitions.

For the purposes of this article, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Bird dealer" shall mean any person engaged in the business of dealing in, purchasing, breeding or offering for sale, whether at wholesale or retail, any exotic or pet birds or birds customarily kept as pets. For purposes of this article, ratites, including the ostrich, the rhea and the emu, are classified as commercial birds or livestock and not as exotic or pet birds.

(b) "Board" shall mean the Mississippi Board of Animal Health.

(c) "Person" shall mean any individual, firm, partnership, corporation, estate, trust, fiduciary or other group or combination acting as a unit.

(d) "State Veterinarian" shall mean the officer appointed by the Board of Animal Health as provided by Section 69-15-7.

SOURCES: Laws, 1982, ch. 308, § 2; Laws, 1993, ch. 417, § 1; Laws, 1996, ch. 543, § 4; Laws, 2000, ch. 512, § 1, eff from and after July 1, 2000.

Cross References — Department of agriculture and commerce, generally, see §§ 69-1-1 et seq.

§ 75-40-105. Misdemeanor to deal in birds without bird dealer's license.

It shall be unlawful for any person to act as a bird dealer unless such person has a valid bird dealer's license. Acting as a bird dealer without a license in violation of this section constitutes a misdemeanor.

SOURCES: Laws, 1982, ch. 308, § 3(1), eff from and after July 1, 1982.

Cross References — Penalty when none is fixed elsewhere by statute, see § 99-19-31.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or violation, see § 99-19-73.

§ 75-40-107. Term of license; classes; fees.

Bird dealers' licenses shall be issued by the board for a period of one (1) year and shall be annually renewable. The board may establish separate classes of licenses, including wholesale and retail licenses. The board shall fix fees for licenses so that the revenue derived therefrom shall approximate the total direct and indirect costs of administering this article; provided, however, that the annual cost of a wholesale license shall not exceed Twenty-five Dollars ($25.00) and the annual cost of a retail license shall not exceed Ten Dollars ($10.00).

SOURCES: Laws, 1982, ch. 308, § 3(2); Laws, 2000, ch. 512, § 2, eff from and after July 1, 2000.

§ 75-40-109. Dealer's records required; duration; reports; inspection of records; grounds for license revocation.

(1) Every bird dealer shall keep records sufficient to identify:

(a) Each exotic or pet bird in his possession or sold by him by species and description;

(b) The name, address and telephone number of the person from whom each such bird was acquired and, if such person is a licensed bird dealer, his license number, or if such person is not a licensed dealer, his driver's license number or social security number or federal tax identification number, if any, or other such identification as may be available;

(c) The name, address and telephone number of the person to whom each such bird is transferred and, if that person is a licensed bird dealer, his license number, or, if that person is not a licensed bird dealer, his driver's license number or social security number, if any, or other such identification as may be available; and

(d) Any bird which the dealer knows to be or have been sick or diseased or to have died.

(2) The board may require periodic reports of any or all of the records required by subsection (1) of this section and may require the keeping of additional records. All required records shall be made available for inspection by the board. Failure to keep or make available any required records shall be grounds for revocation of a license.

(3) Every bird dealer shall keep all of such records for at least one (1) year.

SOURCES: Laws, 1982, ch. 308, § 4; Laws, 1983, ch. 303; Laws, 2000, ch. 512, § 3, eff from and after July 1, 2000.

§ 75-40-111. Quarantine, seizure and destruction of diseased birds authorized; indemnity to owner.

The State Veterinarian may quarantine, seize and destroy any birds which present a hazard of carrying exotic or untreatable disease as determined by rules and regulations promulgated by the board. The board shall pay an indemnity to the owner of any seized or destroyed birds from any federal funds made available for that purpose or any state funds hereafter appropriated for that purpose.

SOURCES: Laws, 1982, ch. 308, § 5; Laws, 2000, ch. 512, § 4, eff from and after July 1, 2000.

Cross References — State veterinarian, generally, see § 69-15-7.

§ 75-40-113. Commissioner of agriculture and commerce to make regulations.

The board may make any rules and regulations not inconsistent with this article governing the business of dealing in or the transportation of exotic or pet birds.

SOURCES: Laws, 1982, ch. 308, § 6; Laws, 2000, ch. 512, § 5, eff from and after July 1, 2000.

Cross References — Commissioner of agriculture and commerce, generally, see §§ 69-1-1 et seq.

§ 75-40-115. Orders of State Veterinarian; procedures.

(1) Whenever it may appear to the Commissioner of Agriculture and Commerce or to his agent, either upon investigation or otherwise, that any person has engaged in, or is engaging in, or is about to engage in any act, practice or transaction which is prohibited by any law or regulation governing activities for which a license from the Board of Animal Health is required by this article, whether or not the person has so registered or obtained such a license or permit, the State Veterinarian may issue an order, if he deems it to be in the public interest or necessary for the protection of the citizens of this state, prohibiting such person from continuing such act, practice or transaction or suspending or revoking any such registration, license or permit held by such person.

(2) In situations where persons otherwise would be entitled to a hearing prior to an order entered pursuant to subsection (1) of this section, the State Veterinarian may issue such an order to be effective upon a later date without hearing unless a person subject to the order requests a hearing within ten (10) days after receipt of the order. Failure to make such request shall constitute a waiver of any provision of law for a hearing. The order shall contain or shall be accompanied by a notice of opportunity for hearing stating that a hearing must be requested within ten (10) days of receipt of the notice and order. The order and notice shall be served in person by the State Veterinarian or his agent or by certified mail, return receipt requested. In the case of an individual registered with or issued a license or permit by the Board of Animal Health, receipt of the order and notice will be conclusively presumed five (5) days after the mailing of the order by certified mail, return receipt requested, to the

address provided by such person in his most recent registration or license or permit application.

(3) In situations where persons otherwise would be entitled to a hearing prior to an order, the State Veterinarian may issue an order to be effective immediately if the State Veterinarian or his agent has reasonable cause to believe that an act, practice or transaction is occurring or is about to occur; that the situation constitutes a situation of imminent peril to the public safety or welfare; and that the situation therefore requires emergency action. The emergency order shall contain findings to this effect and reasons for the determination. The order shall contain or be accompanied by a notice of opportunity for hearing which may provide that a hearing will be held if and only if a person subject to the order requests a hearing within ten (10) days of the receipt of the order and notice. The order and notice shall be served by the State Veterinarian, or his agent, by certified mail, return receipt requested. In the case of an individual registered with or issued a license or permit by the Board of Animal Health, receipt of the order and notice will be conclusively presumed five (5) days after the mailing of the order by certified mail, return receipt requested, to the address provided by such person in his most recent registration or license or permit application.

(4) Any request for hearing made pursuant to subsections (2) and (3) of this section shall specify: (a) in what respects such person is aggrieved, (b) any and all defenses such person intends to assert at the hearing, (c) affirmation or denial of all the facts and findings alleged in the order, and (d) an address to which any further correspondence or notices in the proceeding may be mailed. Upon such a request for hearing, the State Veterinarian shall schedule and hold the hearing, unless postponed by mutual consent, within thirty (30) days after receipt by the State Veterinarian of the request therefor. The State Veterinarian shall give the person requesting the hearing notice of the time and place of the hearing by certified mail to the address specified in the request for hearing at least fifteen (15) days prior to the time of the hearing.

SOURCES: Laws, 1982, ch. 308, § 7(1)-(4); Laws, 2000, ch. 512, § 6, eff from and after July 1, 2000.

Cross References — Court actions to enforce orders issued pursuant to this section, see § 75-40-117.

§ 75-40-117. Legal actions for enforcement of law, regulation or order; injunctive relief.

(1) The State Veterinarian may institute suits or other legal proceedings in any court of proper venue as may be required for the enforcement of any law or regulation governing activities for which registration with or a license or permit from the board is required by this article.

(2) The State Veterinarian may institute an action in any court of proper venue to enforce any order made by him pursuant to the provisions of Section 75-40-115.

(3) In cases in which the State Veterinarian institutes a suit or other legal proceeding to enforce his order, the court may, among other appropriate relief, issue a temporary restraining order or a preliminary, interlocutory or permanent injunction restraining or enjoining persons, and those in active concert with them, from engaging in any acts, practices or transactions prohibited by orders of the State Veterinarian or any law or regulation governing activities for which registration with or a license or permit from the Board of Animal Health is required.

SOURCES: Laws, 1982, ch. 308, § 7(5)-(7); Laws, 2000, ch. 512, § 7, eff from and after July 1, 2000.

CHAPTER 41

Gins

Sec.

75-41-1. Public ginner to mark all cotton baled by him with number and initials of owner and his own.
75-41-3. Cotton weighers to keep register for entry of all cotton with marks, numbers, stamps.
75-41-5 through 75-41-9. Repealed.
75-41-11. Certain combinations of cotton ginners in restraint of trade prohibited.
75-41-13. Penalties.
75-41-15. Liquidated damages.

§ 75-41-1. Public ginner to mark all cotton baled by him with number and initials of owner and his own.

Every public ginner shall plainly mark or stamp upon each bale of cotton packed or baled by him, the number of the bale, his own initials, and the initials of the customer for whom the cotton is ginned and baled, and shall enter in a book or register the name of the customer, the date when each bale was ginned and baled, and a record of the marks placed by him upon each bale as above directed, and shall allow an inspection of such entries at any time by any person interested to make it. Any person violating any of the provisions of this section shall upon conviction, be punished as for a misdemeanor.

SOURCES: Codes, Hemingway's 1917, § 4750; 1930, § 4807; 1942, § 4827; Laws, 1908, ch. 132.

Cross References — Sales tax on cotton compresses or warehouses, see § 27-65-23.

Duties of commissioner of agriculture and commerce, see § 69-1-13.

Criminal offenses with regard to cotton and cotton seed, see §§ 69-3-15, 97-23-7, 97-23-9, 97-23-23.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 75-41-5.

1. In general.

This section does not require a public gin to submit all of its books and records to any person who desires to see them. Hiawatha Gin Co. v. Mississippi Farm Bureau Cotton Ass'n, 138 Miss. 605, 103 So. 345 (1925).

This chapter is constitutional as to its provisions relating to cotton oil mills. State ex rel. Collins v. Crescent Cotton Oil Co., 116 Miss. 398, 77 So. 185 (1918), aff'd, 257 U.S. 129, 42 S. Ct. 42, 66 L. Ed. 166 (1921).

2.-5. [Reserved for future use.]

6. Under former § 75-41-5.

Attorney-general has no authority to grant permission to a corporation to own and operate gins in violation of this chapter. Eastman Oil Mills v. State, 130 Miss. 63, 93 So. 484 (1922).

State officers cannot authorize the commission of offenses, and they have no power to authorize the continuance of any act or business in violation of law.

Eastman Oil Mills v. State, 130 Miss. 63, 93 So. 484 (1922).

The fact that a nonresident corporation operating a cottonseed oil mill in its own state and cotton gins in Mississippi ships out of the latter state for use in its oil mill all of the cottonseed which may be purchased in connection with its ginning operations does not make such operation an instrumentality of interstate commerce so as to invalidate this provision. Crescent Cotton Oil Co. v. Mississippi, 257 U.S. 129, 42 S. Ct. 42, 66 L. Ed. 166 (1921).

The limitation of the restrictions imposed on corporations only does not deny the equal protection of the laws where it is inferable that the restraint of the evil aimed at could be accomplished by controlling corporations only. Crescent Cotton Oil Co. v. Mississippi, 257 U.S. 129, 42 S. Ct. 42, 66 L. Ed. 166 (1921).

Law forbidding cotton oil mill to operate a cotton gin except where its cotton oil plant is located is not invalid as a burden on interstate commerce. Crescent Cotton Oil Co. v. State, 121 Miss. 615, 83 So. 680 (1920), aff'd, 257 U.S. 129, 42 S. Ct. 42, 66 L. Ed. 166 (1921).

It is within the power of the state to forbid a corporation manufacturing cottonseed oil products to operate a cotton gin, except where its oil plant is located, and to impose a penalty for doing so with the added penalty on foreign corporation of forfeiture of its right to do business. State ex rel. Collins v. Crescent Cotton Oil Co., 116 Miss. 398, 77 So. 185 (1918), aff'd, 257 U.S. 129, 42 S. Ct. 42, 66 L. Ed. 166 (1921).

§ 75-41-3. Cotton weighers to keep register for entry of all cotton with marks, numbers, stamps.

Every public cotton weigher, and every person who weighs cotton for any warehouse or gin or cotton buyer, shall keep a book or register, in which he shall enter all marks or stamps provided for in Section 75-41-1 appearing upon each bale of cotton weighed by him, and shall allow an inspection of such entries at any time by any person interested to make it. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

SOURCES: Codes, Hemingway's 1917, § 4751; 1930, § 4808; 1942, § 4828; Laws, 1908, ch. 132.

Cross References — Criminal offenses involving scalage of cotton, see §§ 97-23-11, 97-23-13.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§§ 75-41-5 through 75-41-9. Repealed.

Repealed by Laws, 1973, ch. 302, § 1, eff from and after passage (approved February 2, 1973).

§§ 75-41-5 through 75-41-9. [Codes, Hemingway's 1917, §§ 4752 to 4754; 1930, §§ 4809 to 4811; 1942, §§ 4829 to 4831; Laws, 1914, ch. 162]

Editor's Note — Former § 75-41-5 prohibited corporations from owning gins or controlling them if the corporation engaged in working cotton products.

Former § 74-41-7 authorized oil mills to own gins of limited capacity.

Former § 75-41-9 imposed penalties for operating gins in violation of Chapter 41.

§ 75-41-11. Certain combinations of cotton ginners in restraint of trade prohibited.

It shall be unlawful for chain operators of cotton gins, operating gins in two or more places within the State of Mississippi, to discriminate in prices paid for cottonseed or in the prices charged for ginning services; the necessary operating expenses, freight rates, and other proper elements affecting prices being considered, and the effect of which would be to destroy or attempt to destroy competition at either or any of said places in which said gins shall be operated. Provided, however, that a reduction in the charge for the service herein mentioned made in any locality for the purpose of meeting legitimate competition, or a higher price paid for seed in any locality, when such higher price paid for seed is paid in meeting legitimate competition, shall not constitute a violation of this chapter. And it shall be sufficient to make out a prima facie case of a violation to show a lower charge for the service herein mentioned in one locality than another, or to show a higher price paid for said seed in one locality than another, differences of freight and other necessary expenses of operating business considered.

SOURCES: Codes, 1930, § 4812; 1942, § 4832; Laws, 1928, ch. 305.

Cross References — Penalties for violation of this section, see § 75-41-13.

Liquidated damages for person injured or damaged by violation of provisions of this section, see § 75-41-15.

JUDICIAL DECISIONS

1. In general.

Amendment to this section by Laws 1928, Ch. 305, is constitutional. State ex rel. Jordan v. Gilmer Grocery Co., 156 Miss. 99, 125 So. 710 (1930).

§ 75-41-13. Penalties.

On conviction of violating Section 75-41-11, such operator of chain gins shall be fined in the sum of One Hundred Dollars ($100.00) per bale for the first five (5) bales, and Ten Dollars ($10.00) for each successive bale ginned a day in pursuance of such discriminatory practices; or the said penalty may be recovered by appropriate proceedings in the name of the state, instituted by the attorney general or any district attorney, with the consent of the attorney general, in either the chancery or the circuit courts of the state, and relief may be granted by injunction in the name of the state, as in case of violation of other anti-trust legislation of the state, and each day's operations shall constitute a separate offense.

SOURCES: Codes, 1930, § 4813; 1942, § 4833; Laws, 1928, ch. 305.

§ 75-41-15. Liquidated damages.

Any person, natural or artificial, being injured or damaged by a violation of the provisions of Section 75-41-11, whether said damages be direct or indirect, may recover as liquidated damages in any appropriate action or suit in the circuit or chancery courts, the sum of One Hundred Dollars ($100.00) per bale for the first five (5) bales, and the sum of Ten Dollars ($10.00) for each successive bale thereafter ginned a day by the unlawful combination in competition with the plaintiff; and any person, natural or artificial, being injured by said unlawful combination, may have the relief of injunction in any appropriate proceeding in addition to the recovery of said damages, and each day's operations shall constitute a separate offense.

SOURCES: Codes, 1930, § 4814; 1942, § 4834; Laws, 1928, ch. 305.

CHAPTER 43

Farm Warehouses

Sec.

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75-43-55. Uniform Commercial Code as governing law.

§ 75-43-1. Storage in farm warehouses; application of chapter.

Any landowner, tenant or manager of any lands in this state may store his own grain in a farm warehouse built and situated on such land and receive a warehouse receipt for the same by complying with the provisions of this chapter. Nothing in this chapter shall require any person who does not desire to receive a warehouse receipt for storage of his grain in his warehouse to obtain a license pursuant to this chapter or otherwise to comply with this chapter.

This chapter shall not apply to public grain warehouses, which shall be governed by Sections 75-44-1 et seq.

The provisions of this chapter shall apply to all farm warehouses, as defined by this chapter, and to the operations of all such warehouses.

SOURCES: Codes, 1930, § 3540; 1942, § 5071; Laws, 1924, ch. 270; Laws, 1978, ch. 434, § 1, 2(1), eff from and after July 1, 1978.

Cross References — Warehouse receipts under the Uniform Commercial Code, see § 75-7-201 et seq.

Mississippi Public Grain Warehouse Law, see § 75-44-1 et seq.

Agricultural associations, generally, see § 79-17-1 et seq.

Acquisition and operation of warehouses by agricultural credit associations, see § 81-15-25.

RESEARCH REFERENCES

ALR. Liability of warehouseman for deterioration of goods due to improper temperature. 92 A.L.R.2d 1298.

Am Jur. 78 Am. Jur. 2d, Warehouses §§ 1, 6, 8 et seq.

20 Am. Jur. Legal Forms 2d, Warehouses, § 258:84 et seq. (storage contracts).

20 Am. Jur. Legal Forms 2d, Warehouses, § 258:112 et seq. (rental or sale of storage space).

CJS. 93 C.J.S., Warehousemen and Safe Depositaries §§ 1-3 et seq.

§ 75-43-2. Definitions.

When used in this chapter:

(a) "Person" shall mean individuals, corporations, partnerships and all associations of two (2) or more persons having a joint or common interest.

(b) "Commissioner" shall mean the commissioner of the Mississippi Department of Agriculture and Commerce, or his designated representative.

(c) "Grain" shall mean all grains for which standards have been established pursuant to the United States Grain Standards Act, and shall include rice, as defined by the standards of the United States Department of Agriculture.

(d) "Farm warehouse" shall mean any building, structure or other protected enclosure in this state used for the purpose of storing grain, and which has been licensed pursuant to this chapter.

(e) "Farm warehouseman" shall mean any person who operates a farm warehouse as herein defined.

(f) "Warehouse receipt" shall mean a negotiable grain storage receipt given by the commissioner to a farm warehouseman.

SOURCES: Laws, 1978, ch. 434, § 3, eff from and after July 1, 1978.

§ 75-43-3. Application for license; necessity of obtaining license; fees; renewal of license; lost or destroyed license.

(1) Any person coming under the provisions of this chapter and desiring to utilize the provisions thereof shall file with the Mississippi Department of Agriculture and Commerce, an application for a license, stating the legal description of the land, the location of the building or buildings, the material of which they are made, the name or names of the owners thereof, and such further information as the commissioner, by regulation, requires. If it appears from such application that the building or buildings are suitable structures in which to store grain, and upon satisfaction of the provisions of this section, Sections 75-43-29 through 75-43-33, and any applicable regulations, the commissioner shall issue a license to the applicant which designates such building or buildings as farm warehouses, and which authorizes the applicant to operate the farm warehouse under this chapter and receive warehouse receipts for his own grain stored in the warehouse pursuant to this chapter.

This license shall be good for one (1) year, and it is renewable upon compliance with this chapter.

(2) No person shall operate a farm warehouse as defined by this chapter without first having obtained a license pursuant to this chapter.

(3) Applications for licenses under this chapter are to be made on forms prescribed by the commissioner for each separate warehouse or, if an applicant owns more than one (1) warehouse at any one (1) location, which does not exceed eight (8) miles in distance, then all the warehouses at that location may be included in one (1) application.

(4) Prior to the issuance of a license, every applicant shall pay an annual license fee based upon the capacity of the warehouse, such fee to be determined by the commissioner, but not to exceed fifty dollars ($50.00).

(5) If a farm warehouseman desires to renew his license for an additional year, application for such renewal shall be made on a form prescribed by the commissioner. At least sixty (60) days prior to the expiration of each license, the commissioner shall notify each farm warehouseman of the date of such expiration and furnish such farm warehouseman with the renewal form.

(6) Upon satisfactory proof of the loss or destruction of a license issued to a farm warehouseman, a duplicate thereof or a new license may be issued under the same number.

SOURCES: Codes, 1930, § 3541; 1942, § 5072; Laws, 1924, ch. 270; Laws, 1978, ch. 434, § 5, eff from and after July 1, 1978.

Cross References — Penalties for false or fraudulent representation in application for license, see § 75-43-15.

Denial of application for license, see § 75-43-23.

Requirement for posting of license, see § 75-43-25.

Suspension, cancellation or revocation of license, see § 75-43-27.

Furnishing of bond prior to grant of license, see § 75-43-29.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 14.

20 Am. Jur. Legal Forms 2d, Warehouses §§ 258:19, 258:20 (application for warehouse license).

CJS. 93 C.J.S., Warehousemen and Safe Depositaries §§ 8, 9, 12 et seq.

§ 75-43-5. Repealed.

Repealed by Laws, 1978, ch. 434, § 27, eff from and after July 1, 1978. [Codes, 1930, § 3542; 1942, § 5073; Laws, 1924, ch. 270]

Editor's Note — Former § 75-43-5 authorized county boards of supervisors to appoint a warehouse inspector.

§ 75-43-7. Application for receipt; certification of grade of grain.

(1) Whoever holds a license to operate a farm warehouse, as provided for by this chapter, shall be entitled to have issued on his own grain stored in his farm warehouse or warehouses, a warehouse receipt or receipts, which shall be issued by the commissioner upon compliance with this section by the license holder.

(2) Any license holder desiring a warehouse receipt on his grain shall file application with the commissioner, on a form supplied by the commissioner, which shall state the location, the type, and the quantity of the grain on which the receipt is to be issued. In or accompanying the application, the applicant shall certify the grade of the grain and he shall agree to maintain the certified grade during the time that the grain is stored in his warehouse, and to deliver the certified grade to the holder of the warehouse receipt, upon demand for redemption of the receipt.

SOURCES: Codes, 1930, § 3543; 1942, § 5074; Laws, 1924, ch. 270; Laws, 1978, ch. 434, § 13, eff from and after July 1, 1978.

Cross References — Warehouse receipts and other documents of title generally, see § 75-7-101 et seq.

Penalties for false or fraudulent representation in application for license, see § 75-43-15.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 28 et seq.

19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 7—Warehouse Receipts, Bills of Lading and Other Documents of Title, § 253:2613 (warehouse receipt for flour).

19 Am. Jur. Legal Forms 2d, Uniform Commercial Code: Article 7—Documents of Title, § 253:2614 (warehouse receipt for grain).

19 Am. Jur. Legal Forms 2d, Uniform Commercial Code, Article 7—Documents of Title, § 253:2616 (warehouse receipt for

produce, generally).

CJS. 93 C.J.S., Warehousemen and Safe Depositaries §§ 35-72.

§ 75-43-9. Issuance of receipt; posting notice that grain in warehouse is under receipt; prohibition against limitation of liability.

(1) When the application has been received by the commissioner, and the applicant has certified the grade of the grain and agreed to maintain and deliver the certified grade, as required by Section 75-43-7, the commissioner shall immediately issue the applicant a warehouse receipt or receipts which shall be under his signature. The receipt shall conform to the requirements of Section 75-7-202, and in addition shall embody within its written or printed terms the legal description of the land, the location of the warehouse or warehouses, and the quantity and grade of the grain stored in the warehouse.

(2) At the time the warehouse receipt or receipts are issued, the farm warehouseman shall place upon the warehouse or warehouses in a conspicuous place, a notice that the grain in his warehouse is under warehouse receipt, which notice shall contain a statement of the quantity and grade of the grain, the bins or containers which contain the grain covered by the receipt, and the date of the expiration of the warehouse license.

(3) A farm warehouseman shall not insert any language in any warehouse receipt or make any contract with respect to any warehouse receipt which purports to limit the liabilities or responsibilities imposed on him by law.

SOURCES: Codes, 1930, § 3544; 1942, § 5075; Laws, 1924, ch. 270; Laws, 1978, ch. 434, § 14, eff from and after July 1, 1978.

Cross References — Warehouse receipts and other documents of title generally, see § 75-7-101 et seq.

§ 75-43-11. Warehouse receipts negotiable; sale or pledge of receipts.

(1) All warehouse receipts issued are hereby made negotiable, transferable and assignable, provided that when the warehouse receipt is issued to a tenant, it shall be issued only subordinate to the landlord's lien and the name of such landlord shall be given thereon. Provided, however, this chapter shall in no way be construed to impair or affect the landlord's lien or any lien created by written instrument and duly recorded as provided by law.

(2) A farm warehouseman may make a valid sale or pledge of any warehouse receipts issued for his own grain stored in his farm warehouse, and the recital of ownership in the receipt shall constitute notice of the right to sell or pledge the same and of the title or specified lien of the transferee or pledgee upon the warehouseman's grain represented by the receipts.

SOURCES: Codes, 1930, § 3545; 1942, § 5076; Laws, 1924, ch. 270; Laws, 1978, ch. 434, § 16, eff from and after July 1, 1978.

Cross References — Warehouse receipts and other documents of title generally, see § 75-7-101 et seq.

Provisions of Chapter 43 of Title 75, relating to farm warehouses, to have no effect on landlord's lien, see § 75-43-11.

RESEARCH REFERENCES

ALR. Effectiveness, as pledge, of transfer of warehouse receipt. 53 A.L.R.2d 1406.

Am Jur. 78 Am. Jur. 2d, Warehouses § 38 et seq., § 59 et seq.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries §§ 48-72.

§ 75-43-13. Insurance.

(1) Every farm warehouseman to whom warehouse receipts are issued shall at all times keep the grain stored in the farm warehouse insured by an insurance company authorized to do business in this state. The grain is to be insured for its full market value against loss by fire, inherent explosion, lightning, tornado and windstorm, and failure to do so shall make the farm warehouseman liable for the same. All such policies shall provide that no cancellations shall be effective unless thirty (30) days' prior notice is given the commissioner.

(2) If fire, inherent explosion, lightning, tornado or windstorm shall destroy or damage all or part of the grain stored in any farm warehouse, the farm warehouseman shall, upon demand by the holder of any warehouse receipt for such grain, and upon being presented with the warehouse receipt, make settlement for the fair market value.

SOURCES: Codes, 1930, § 3546; 1942, § 5077; Laws, 1924, ch. 270; Laws, 1978, ch. 434, § 17, eff from and after July 1, 1978.

RESEARCH REFERENCES

ALR. Presumptions and burden of proof or of evidence where goods stored in situation governed by Uniform Warehouse Receipts Act are stolen, or are damaged or lost by fire or water. 13 A.L.R.2d 681.

Warehouseman's liability for injury to or destruction of stored goods from floods, heavy rains, or the like. 60 A.L.R.2d 1097.

Sufficiency of warehouseman's precautions to protect goods against fire. 42 A.L.R.3d 908.

Am Jur. 78 Am. Jur. 2d, Warehouses § 116 et seq.

20 Am. Jur. Legal Forms 2d, Warehouses, § 258:91 (insurance provisions in warehouse contracts).

§ 75-43-15. Penalties.

(1) Any person who wilfully makes a false or fraudulent representation in his application for a license or warehouse receipt, or who wilfully removes or permits to be removed from the farm warehouse or warehouses owned or

controlled by him, any grain contained in such warehouses while a farm warehouse receipt or receipts issued upon such grain is negotiated, transferred or assigned, without first procuring a release and the consent of the owner of the grain, or who falsely swears as to the true ownership of any such grain, or as to the existence of any security interest, lien or other encumbrance thereon, or who otherwise commits any willful violation of any provision of this chapter, shall be guilty of a felony, and upon conviction thereof, shall be punished by a fine of not more than twenty thousand dollars ($20,000.00) and/or imprisonment for not more than five (5) years.

(2) Any person who negligently commits any of the violations listed in subsection (1) of this section or who otherwise commits any negligent violation of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars ($5,000.00) and/or imprisonment for not more than one (1) year.

SOURCES: Codes, 1930, § 3547; 1942, § 5078; Laws, 1924, ch. 270; Laws, 1978, ch. 434, § 26, eff from and after July 1, 1978.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (1). The word "wilfull" was changed to "willful." The Joint Committee ratified the correction at its December 3, 1996, meeting.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 182.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 172 et seq.

§ 75-43-17. Receipts; redemption.

In case any one to whom a warehouse receipt is issued, under the provisions of this chapter, shall negotiate, assign, transfer or pledge the same to any person, individual, firm or corporation, as security for any money, credit or other obligation, and shall thereafter pay or tender the full amount due thereon to such assignee or holder for any such money or credit, and shall fulfill and discharge any such other obligation for which such warehouse receipt was negotiated, transferred or assigned, it shall then be the duty of such assignee or holder of such receipt to immediately, upon request of the person to whom the same was issued, surrender to the person to whom said receipt was issued, said warehouse receipt, together with the release of the lien thereon for which it was negotiated, assigned or pledged. Upon the failure of any such assignee or holder to surrender or release the same, he shall be fined in any sum not exceeding one hundred dollars ($100.00) and pay the cost of prosecution; and, moreover, he shall be liable to the party to whom such receipt was issued for any and all damages by him sustained.

SOURCES: Codes, 1930, § 3548; 1942, § 5079; Laws, 1924, ch. 270.

Cross References — Negotiation of warehouse receipts under the Uniform Commercial Code, see § 75-7-501 et seq.

§ 75-43-19. Repealed.

Repealed by Laws, 1978, ch. 434, § 27, eff from and after July 1, 1978.

[Codes, 1930, § 3549; 1942, § 5080; Laws, 1924, ch. 270; 1966, ch. 316, § 10-105]

Editor's Note — Former § 75-43-19 made provisions of the Uniform Commercial Code applicable to §§ 75-43-1 through 75-43-17 whenever the Uniform Commercial Code was not inconsistent with the sections noted. For current provisions, see § 75-43-55.

§ 75-43-21. Powers and duties of commissioner of agriculture and commerce.

The commissioner shall carry out and enforce the provisions of this chapter and is hereby empowered to promulgate rules and regulations to carry out necessary inspections and to appoint and fix the duties of his personnel and provide such equipment as may be necessary to assist him in enforcing the provisions thereof.

SOURCES: Laws, 1978, ch. 434, § 4, eff from and after July 1, 1978.

§ 75-43-23. Denial of application for license; hearing; appeal.

If, after proper application, the commissioner denies any person, partnership, association or corporation a license to operate a farm warehouse, the commissioner shall transmit immediately to the applicant by certified mail an order so providing, which shall state the reasons for the denial. In the event the applicant is dissatisfied at the decision of the commissioner, the applicant may request a hearing within ninety (90) days with the commissioner, to appear and defend its compliance with all appropriate regulations and/or give evidence that all deficiencies have been corrected. If, after said hearing, the commissioner denies applicant a license, the commissioner shall transmit immediately to applicant by certified mail an order so providing, which shall state the reasons for the denial. In the event the applicant is dissatisfied at the decision of the commissioner after the hearing, the applicant may appeal to the chancery court of the county where the farm warehouse is located, within thirty (30) days of the date of the order, in accordance with the provisions of subsection (2) of Section 75-43-27.

SOURCES: Laws, 1978, ch. 434, § 6, eff from and after July 1, 1978.

Cross References — Application for license, see § 75-43-3.
Renewal of license, see § 75-43-3.
Suspension, cancellation or revocation of license, see § 75-43-27.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 14.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 8, 9.

§ 75-43-25. Posting of license.

Immediately upon receipt of his license or of any modification or extension thereof, the farm warehouseman shall post the license in a place designated by the commissioner, and thereafter keep it posted until suspended or terminated.

SOURCES: Laws, 1978, ch. 434, § 7, eff from and after July 1, 1978.

§ 75-43-27. Suspension, cancellation or revocation of license; return of license.

(1) If a farm warehouseman is convicted of any crime involving fraud or deceit, or if the commissioner determines that any farm warehouseman has violated any of the provisions of this chapter, or any of the rules and regulations adopted by the commissioner pursuant to this chapter, the commissioner may, at his discretion, suspend, cancel or revoke the license of such farm warehouseman.

(2) All proceedings for the suspension, cancellation or revocation of licenses shall be before the commissioner, and the proceedings shall be in accordance with rules and regulations which shall be adopted by the commissioner. No license shall be cancelled or revoked, except after a hearing before the commissioner, upon reasonable notice to the licensee and an opportunity to appear and defend. The commissioner may temporarily suspend the license of a licensee for good and reasonable cause before notice or hearing, and the licensee shall be entitled to a hearing on such temporary suspension without undue delay. Whenever the commissioner shall suspend, cancel or revoke any license, he shall prepare an order so providing which shall state the reason or reasons for such suspension, cancellation or revocation. The order shall be sent, by certified mail, by the commissioner to the licensee at the address of the farm warehouse licensed. Within thirty (30) days after the mailing of the order, the licensee, if dissatisfied with the order of the commissioner, may appeal to the chancery court of the county where the farm warehouse is located by filing a written notice of appeal alleging the pertinent facts upon which such appeal is grounded. At the time of the filing of the appeal, the appellant shall give a bond for costs conditioned upon his prosecution of the appeal without delay and payment of all costs assessed against him. Appeal may be with supersedeas and shall be subject to the provisions of Section 11-51-31.

(3) In case a license issued to a farm warehouseman expires or is suspended, revoked or cancelled by the commissioner or his designated representative, such license shall be immediately returned to the commissioner and the farm warehouseman shall forthwith comply with the provisions of Section 75-43-51.

SOURCES: Laws, 1978, ch. 434, § 8, eff from and after July 1, 1978.

Cross References — Application for license, see § 75-43-3.
Denial of application for license, see § 75-43-23.
Notice of suspension, cancellation or revocation of license, see § 75-43-51.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 14.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 8, 9.

§ 75-43-29. Warehouseman's bond; cancellation of bond by surety; self-insurance.

(1) Before any person is granted a license pursuant to Section 75-43-3, such person shall give a bond to the commissioner executed by the farm warehouseman as principal and by a corporate surety licensed to do business in this state as a surety, such bond to be approved by the commissioner of insurance. The bond shall be in favor of the commissioner for the benefit of all persons interested, their legal representatives, attorneys or assigns, conditioned upon the faithful compliance by the farm warehouseman with the provisions of this chapter and the rules and regulations of the state department of agriculture and commerce applicable thereto. The aggregate liability of the surety to all depositors or storers of grain shall not exceed the sum of such bond. The bond may be cancelled at any time by the surety by giving written notice to the commissioner of agriculture and commerce of its intention to cancel the bond, and all liability thereunder shall terminate thirty-five (35) days after the mailing of such notice, except that such notice shall not affect any claims arising under the bond, whether presented or not, before the effective date of the cancellation notice.

(2) In lieu of the bond required in subsection (1) of this section, an applicant for a license may be a self-insurer by posting with the commissioner cash, federal treasury bills, notes, securities or bonds, provided such notes, securities or bonds are secured by the federal government or the State of Mississippi in an amount equivalent to the bond as provided in Section 75-43-31.

SOURCES: Laws, 1978, ch. 434, § 9, eff from and after July 1, 1978.

Cross References — Renewal of license, see § 75-43-3.
Suspension, cancellation or revocation of license, see § 75-43-27.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 83 et seq.

20 Am. Jur. Legal Forms 2d, Warehouses § 258:28 et seq. (warehouseman's bond).

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 24-34.

§ 75-43-31. Amount of warehouseman's bond; blanket bond; increasing amount of bond.

(1) The amount of bond to be furnished for each farm warehouse shall be fixed at a rate of not less than twenty cents (20¢) per bushel for the first one million (1,000,000) bushels of licensed capacity; not less than fifteen cents (15¢) per bushel for the next one million (1,000,000) bushels of licensed capacity; and not less than ten cents (10¢) per bushel for all licensed capacity over two million (2,000,000) bushels; provided that in no case shall the amount of the bond be less than five thousand dollars ($5,000.00) or more than five hundred thousand dollars ($500,000.00), except as prescribed in subsection (3) of this section. The licensed capacity shall be equal to the maximum number of bushels of grain that the farm warehouse can accommodate for storage. In no event shall the liability of the surety accumulate for each successive license period during which this bond is in force, but shall be limited in the aggregate to the bond amount or changed by appropriate rider or endorsement.

(2) A farm warehouseman who is licensed or is applying for licenses to operate two (2) or more farm warehouses may give a single bond meeting the requirements of this chapter to cover all such farm warehouses within the state. In such cases all farm warehouses to be covered by the bond shall be deemed to be one (1) warehouse for purposes of determining the amount of bond required under subsection (1) of this section.

(3) If the commissioner finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond such further amount as is determined to be reasonable by the commissioner.

SOURCES: Laws, 1978, ch. 434, § 10, eff from and after July 1, 1978.

RESEARCH REFERENCES

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 24-34.

§ 75-43-33. Additional bond to cover obligations when application made for amendment to license.

If an application is made for an amendment to a license and no bond previously filed by the farm warehouseman under Sections 75-43-29 and 75-43-31 covers obligations arising during the period covered by such amendment, the farm warehouseman shall file with the commissioner an additional bond in such amount as may be determined by the commissioner.

SOURCES: Laws, 1978, ch. 434, § 11, eff from and after July 1, 1978.

§ 75-43-35. Actions on bonds or against self-insurers for failure to redeem warehouse receipts.

(1) In the absence of any contrary contractual agreement between the parties, it shall be the duty of the farm warehouseman to redeem a warehouse receipt within ten (10) days of the demand for the redemption of such receipt. Any holder of a warehouse receipt issued to a farm warehouseman by the commissioner, who has made demand for redemption of such receipt, which demand was, without lawful excuse, not satisfied within ten (10) days, shall notify the commissioner in writing and shall have the right to bring action against the farm warehouseman and the surety on the farm warehouseman's bond for payment of the market value of the grain represented by such warehouse receipt, such market value to be determined as of the date of the demand, plus legal interest accrued from the date of the demand. The surety has the responsibility to pay within fifteen (15) days following receipt by the surety of the notice of the demand for redemption. In the event the farm warehouseman is a self-insurer, as provided in Section 75-43-29, the holder of a warehouse receipt shall have the right to bring action against the farm warehouseman to the extent of the amount posted in lieu of the bond. The commissioner shall pay to the holder of the warehouse receipt, to the extent of the bond posted, any judgment obtained by the holder of a warehouse receipt against a self-insurer. The commissioner may also pay to the holder of a warehouse receipt the amount of the market value of the grain, provided that the farm warehouseman agrees to such payment; provided, however, the license of the farm warehouseman shall be suspended upon such payment until such time as the warehouseman posts a bond as provided in this chapter, or posts with the commissioner a sum equivalent to that paid by the commissioner on behalf of such warehouseman.

(2) In all actions in which judgment is rendered against any surety company under the provisions of this section, if it appears from evidence that the surety company has wilfully and without just cause refused to pay the loss upon demand, the court, in rendering judgment, shall allow the plaintiff the amount of the plaintiff's expenses, including court costs and attorney's fees, to be recovered and collected as part of the costs. The amount of any payment of costs and attorney's fees under this subsection will not reduce the surety's remaining liability on its bond.

SOURCES: Laws, 1978, ch. 434, § 12, eff from and after July 1, 1978.

Cross References — Warehouse receipts and other documents of title generally, see § 75-7-101 et seq.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 84.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 24-34.

§ 75-43-37. Maintenance of grade of grain; failure to maintain grade.

(1) It shall be the duty of each farm warehouseman to whom a warehouse receipt or receipts have been issued to maintain the grade of the grain which he certified in his application for a warehouse receipt, as required by Section 75-43-7.

(2) If the farm warehouseman does not maintain the grade of the grain which he certified in the application, he shall be liable on his bond, or on the amount posted in lieu of the bond, to the holder of the warehouse receipt who has made demand for the redemption of the receipt for the amount of the damages sustained by the holder of the receipt. The holder of the receipt shall give notice to the commissioner, and payment shall be made, in accordance with the procedure set forth in Section 75-43-35.

(3) The right of the holder of the warehouse receipt to make a claim against the bond or amount posted in lieu of the bond for failure of the warehouseman to maintain the grade of the grain shall exist only while the grain is still in the warehouse or on the premises of the storage facility. Once the holder of the receipt removes the grain from the premises of the storage facility, he relinquishes all right to make a claim against the bond or amount posted in lieu of the bond for damages sustained because of a decrease in the grade of the grain.

SOURCES: Laws, 1978, ch. 434, § 15, eff from and after July 1, 1978.

§ 75-43-39. Examination of warehouse by commissioner.

Every farm warehouse for which there is a warehouse receipt outstanding shall be examined monthly by the commissioner. The cost of such examination shall be included in the annual license fee. The commissioner, at his discretion, may make additional examinations of any public grain warehouse at any time. If any discrepancy is found as a result of additional examination, the cost of such examination is to be paid by the farm warehouseman. The commissioner shall examine and inspect the grain stored in the farm warehouse, and shall determine the quantity of the grain stored in each container in the warehouse. The commissioner shall maintain a record and file of all inspections made of the warehouses and of the results of such inspections.

SOURCES: Laws, 1978, ch. 434, § 18, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 5.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 11.

§ 75-43-41. Copies of warehouse receipts.

At least one (1) actual or skeleton copy of all receipts shall be made and retained by the commissioner, and all copies shall have clearly and conspicuously printed or stamped on them the words "Copy-Not Negotiable."

SOURCES: Laws, 1978, ch. 434, § 19, eff from and after July 1, 1978.

§ 75-43-43. Commissioner to approve form of warehouse receipts; printing of warehouse receipts by state printer.

The form of all receipts shall be approved by the commissioner. The commissioner shall be authorized to have printed by the state printer all warehouse receipts to be issued by the commissioner.

SOURCES: Laws, 1978, ch. 434, § 20, eff from and after July 1, 1978.

Cross References — Warehouse receipts and other documents of title generally, see § 75-7-101 et seq.

§ 75-43-45. Issuance of new warehouse receipt for undelivered portion of grain.

If a farm warehouseman delivers only a part of a lot of grain for which a warehouse receipt has been issued, the commissioner, upon proper notice, shall take up and cancel such receipt and issue a new receipt for the undelivered portion of grain.

SOURCES: Laws, 1978, ch. 434, § 21, eff from and after July 1, 1978.

Cross References — Warehouse receipts and other documents of title generally, see § 75-7-101 et seq.

RESEARCH REFERENCES

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 40.

§ 75-43-47. Delivery of grain pursuant to warehouse receipts.

A farm warehouseman shall not deliver grain for which a warehouse receipt has been issued until the receipt has been returned to him and cancelled.

SOURCES: Laws, 1978, ch. 434, § 22, eff from and after July 1, 1978.

Cross References — Warehouse receipts and other documents of title generally, see § 75-7-101 et seq.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 36 et seq.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries §§ 108-111 et seq.

§ 75-43-49. Warehouse receipts not to be issued except for actual storage nor for quantities greater than actually stored.

No warehouse receipt shall be issued, unless the grain for which it is to be issued is actually present in storage in the warehouse, nor shall any receipt be issued for a greater quantity of grain than is in storage in the warehouse, nor shall more than one (1) receipt be issued for the same lot of grain, except in cases where a receipt for a part of a lot is desired, and then the aggregate receipts for a particular lot shall cover that lot and no more.

SOURCES: Laws, 1978, ch. 434, § 23, eff from and after July 1, 1978.

Cross References — Warehouse receipts and other documents of title generally, see § 75-7-101 et seq.

§ 75-43-51. Notice by warehouseman of discontinuance of operations or of suspension, revocation or cancellation of license.

Any person operating a farm warehouse who desires to discontinue such operation at the expiration of his license, or whose license is suspended, revoked or cancelled by the commissioner or his designated representative, shall notify the commissioner and all holders of warehouse receipts, if known, or if not know, by advertising in the newspaper or newspapers of largest general circulation in the community in which the farm warehouse is located once per week for three (3) consecutive weeks, at least thirty (30) days prior to the date of expiration of his license, of his intention to discontinue the farm warehouse business, and the owners of the grain shall remove, or cause to be removed, their grain from such farm warehouse before the expiration of the license.

SOURCES: Laws, 1978, ch. 434, § 24, eff from and after July 1, 1978.

Cross References — Suspension, cancellation or revocation of license, see § 75-43-27.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 16.

§ 75-43-53. Information relating to affairs or transactions of warehouse not to be disclosed by commissioner's inspectors or employees.

No inspector or employee of the commissioner's office shall disclose any information obtained by him in the course of his employment related to the affairs or transactions of any farm warehouse without first having obtained the express permission in writing of such farm warehouseman.

SOURCES: Laws, 1978, ch. 434, § 25, eff from and after July 1, 1978.

§ 75-43-55. Uniform Commercial Code as governing law.

The provisions and definitions of the Uniform Commercial Code relating to warehouse receipts, to the extent not inconsistent with this chapter, shall govern warehouse receipts issued by the commissioner under this chapter, and the other provisions of the Uniform Commercial Code shall also be applicable to the provisions of this chapter to the extent not inconsistent with this chapter.

SOURCES: Laws, 1978, ch. 434, § 2(2), eff from and after July 1, 1978.

Cross References — Warehouse receipts under the Uniform Commercial Code, see § 75-7-101 et seq.

General obligations under Uniform Commercial Code of warehouse receipts and bills of lading, see § 75-7-401 et seq.

Negotiation and transfer under Uniform Commercial Code of warehouse receipts and bills of lading, see § 75-7-501 et seq.

Miscellaneous provisions under Uniform Commercial Code relating to warehouse receipts and bills of lading, see § 75-7-601 et seq.

CHAPTER 44

Grain Warehouses

Sec.

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75-44-71. Penalties.

§ 75-44-1. Short title.

This chapter shall be known as the "Mississippi Grain Warehouse Law."

SOURCES: Laws, 1977, ch. 409, § 1; Laws, 1981, ch. 354, § 1, eff from and after July 1, 1981.

Cross References — Uniform Commercial Code; Documents of Title, see § 75-7-101 et seq.

Farm warehouses, see § 75-43-1 et seq.

Exemption for licensees under the Mississippi Grain Warehouse Law from licensing requirements of the Grain Dealers Law, see § 75-45-304.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses §§ 1, 6, 8 et seq.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 7-3 et seq.

§ 75-44-3. Application of chapter; governing law as to warehouse receipts.

(1) The provisions of this chapter shall apply to all grain warehouses and to the operations of such grain warehouses whether or not any of the grain therein is owned by the warehouseman, unless such grain warehouse is licensed under the provisions of the United States Warehouse Act, as amended.

(2) The provisions and definitions of the Uniform Commercial Code relating to warehouse receipts to the extent not inconsistent with this chapter shall govern warehouse receipts issued by grain warehousemen.

SOURCES: Laws, 1977, ch. 409, § 2; Laws, 1981, ch. 354, § 2, eff from and after July 1, 1981.

Cross References — Special provisions under Uniform Commercial Code relating to warehouse receipts, see § 75-7-201 et seq.

General obligations under Uniform Commercial Code of warehouse receipts and bills of lading, see § 75-7-401 et seq.

Negotiation and transfer under Uniform Commercial Code of warehouse receipts and bills of lading, see § 75-7-501 et seq.

Miscellaneous provisions under Uniform Commercial Code relating to warehouse receipts and bills of lading, see § 75-7-601 et seq.

Applicability of chapter 43 of this title to public grain warehouses, see § 75-43-1.

Federal Aspects — United States Warehouse Act, see 7 USCS § 241.

§ 75-44-5. Definitions.

When used in this chapter:

(a) "Person" includes individuals, corporations, partnerships and all associations of two (2) or more persons having a joint or common interest.

(b) The term "commissioner" shall mean the Commissioner of the Mississippi Department of Agriculture and Commerce, or his designated representative.

(c) "Grain" shall mean all grains for which standards have been established pursuant to the United States Grain Standards Act, as amended, and rice as defined by the Agriculture Marketing Act of 1946, as amended.

(d) "Stored grain" shall mean any grain received in any grain warehouse, located in this state, if same is not purchased and beneficially owned by the grain warehouseman.

(e) "Grain warehouse" shall mean any structure or combination of structures operated together, including the machinery and equipment used in connection therewith, in or by means or which grain is unloaded, elevated, stored, loaded for shipment, dried, cleaned, weighed, treated, conditioned or otherwise handled from producers of grain.

(f) "Grain warehouseman" shall mean any person who operates a grain warehouse as herein defined.

(g) "Inspector" shall mean a person authorized by the warehouseman to weigh, inspect, grade and/or certificate the weight and grade of grain stored or to be stored in a grain warehouse.

(h) "Warehouse receipt" shall mean a negotiable grain storage receipt and/or a nonnegotiable scale ticket given by a grain warehouse.

SOURCES: Laws, 1977, ch. 409, § 3; Laws, 1978, ch. 314, § 1; Laws, 1981, ch. 354, § 3, eff from and after July 1, 1981.

Federal Aspects — United States Grain Standards Act, see 7 USCS § 71 et seq. Agriculture Marketing Act of 1946, see 7 USCS § 1621 et seq.

§ 75-44-7. Powers and duties of commissioner of agriculture and commerce.

The commissioner shall carry out and enforce the provisions of this chapter and is hereby empowered to promulgate rules and regulations to carry out necessary inspections and to appoint and fix the duties of his personnel and provide such equipment as may be necessary to assist him in enforcing the provisions thereof.

SOURCES: Laws, 1977, ch. 409, § 4, eff from and after July 1, 1977.

§ 75-44-9. Necessity of obtaining license.

No person shall operate a grain warehouse or issue a warehouse receipt without first having obtained a license pursuant to this chapter unless such grain warehouse is licensed under the provisions of the United States Warehouse Act, as amended.

SOURCES: Laws, 1977, ch. 409, § 5; Laws, 1981, ch. 354, § 4, eff from and after July 1, 1981.

Federal Aspects — United States Warehouse Act, see 7 USCS § 241.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 14.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 8, 9.

§ 75-44-11. Application for license; application fee.

Applications for licenses under this chapter are to be made on forms prescribed by the commissioner for each separate warehouse or, if an applicant owns more than one (1) warehouse at any one (1) location, which does not exceed eight (8) miles in distance, then all the warehouses at that location may be included in one (1) application. Every application is to be accompanied by an application fee of one hundred fifty dollars ($150.00) and a certified financial statement in a form prescribed by the commissioner and such further information as the commissioner may by regulation require.

SOURCES: Laws, 1977, ch. 409, § 6, eff from and after July 1, 1977.

RESEARCH REFERENCES

Am Jur. 20 Am. Jur. Legal Forms 2d, Warehouses, §§ 258:19, 258:20 (application for warehouse license).

§ 75-44-13. Annual license fee.

Prior to the issuance of a license, every applicant shall pay an annual license fee based upon the capacity of the warehouse, such fee to be determined by the commissioner, but not to exceed one hundred dollars ($100.00).

SOURCES: Laws, 1977, ch. 409, § 7, eff from and after July 1, 1977.

§ 75-44-15. Renewal of license.

If a grain warehouseman desires to renew his license for an additional year, application for such renewal shall be made on a form prescribed by the commissioner. At least sixty (60) days prior to the expiration of each license, the commissioner shall notify each grain warehouseman of the date of such expiration and furnish such grain warehouseman with the renewal form.

SOURCES: Laws, 1977, ch. 409, § 8; Laws, 1981, ch. 354, § 5, eff from and after July 1, 1981.

§ 75-44-17. Copy of schedule of charges for storage and other services to be filed before license granted; changes in schedules.

Before a license to conduct a grain warehouse is granted under Section 75-44-23, the grain warehouseman shall file with the commissioner a copy of his schedule of charges for storage and other services. If the grain warehouseman desires to make any change in the schedule of charges during the license period, he shall file with the commissioner a statement in writing showing the change at least thirty (30) days prior to its effective date. Each grain warehouseman shall keep conspicuously posted the schedule of charges for storage and other services as so filed, and shall strictly adhere to these charges.

SOURCES: Laws, 1977, ch. 409, § 9; Laws, 1981, ch. 354, § 6, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 4.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 5-7.

§ 75-44-19. Posting of license.

Immediately upon receipt of his license or of any modification or extension thereof, the grain warehouseman shall post same and thereafter keep it posted until suspended or terminated in a conspicuous place in the office of the grain warehouse to which such license applies where receipts issued by such grain warehouseman are delivered to depositors.

SOURCES: Laws, 1977, ch. 409, § 10; Laws, 1981, ch. 354, § 7, eff from and after July 1, 1981.

§ 75-44-21. Maintenance of net assets for payment of indebtedness arising from conduct of warehouse.

(1) Each grain warehouseman shall have and maintain above all exemptions and liabilities, total net assets available for the payment of any indebtedness arising from the conduct of the grain warehouse in an amount equal to at least twenty cents (20¢) multiplied by the maximum number of bushels of grain for which the grain warehouse is licensed, provided that no person may be licensed as a grain warehouseman under the regulations in this part unless he has available net assets of at least twenty thousand dollars ($20,000.00); and provided further, that any deficiency in net assets required above the minimum of twenty thousand dollars ($20,000.00) may, at the discretion of the commissioner, be supplied by a commensurate increase in the amount of the grain warehouseman's bond furnished pursuant to Sections 75-44-29, 75-44-31, 75-44-33 and 75-44-35. In determining total available net assets, credit may be given for insurable assets such as buildings, machinery, equipment and merchandise inventory only to the extent of the current market value of such assets and only to the extent that such assets are protected by insurance against loss or damage. Such insurance shall be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state, and which provide that no cancellation shall be effective unless thirty (30) days' advance notice of such cancellation is given to the commissioner.

(2) If a grain warehouseman is licensed or is applying for license to operate two (2) or more grain warehouses, the maximum total number of bushels which all such facilities will accommodate when stored in the manner customary to the warehouses, as determined by the commissioner, shall be considered in determining whether the grain warehouseman meets the available net assets requirement of subsection (1) of this section.

(3) For the purposes of subsections (1) and (2) of this section only, capital stock as such shall not be considered a liability.

SOURCES: Laws, 1977, ch. 409, § 11; Laws, 1981, ch. 354, § 8; Laws, 1982, ch. 367, § 1, eff from and after July 1, 1982.

Cross References — Required increase in amount of surety bond to compensate for deficiency in net assets required to be maintained under this section, see § 75-44-31.

§ 75-44-23. Issuance of license; hearing on denial of license.

(1) Upon satisfaction of Sections 75-44-9 through 75-44-21, and 75-44-29 through 75-44-33, and any applicable regulations by an applicant, the commissioner shall issue a license to operate a grain warehouse.

(2) If after proper application, the commissioner denies any person, partnership, association or corporation a license to operate a grain warehouse, the commissioner shall transmit immediately to said applicant by certified mail an order so providing which shall state the reasons for said denial. In the event the applicant is dissatisfied at the decision of the commissioner, the applicant may request a hearing within ninety (90) days with the commissioner to appear and defend its compliance with all appropriate regulations and/or give evidence that all deficiencies have been corrected. If after said hearing, the commissioner denies applicant a license, the commissioner shall transmit immediately to applicant by certified mail an order so providing which shall state the reasons for said denial. In the event the applicant is dissatisfied at the decision of the commissioner after the hearing, the applicant may appeal to the chancery court of the county where the grain warehouse is located within thirty (30) days of the date of said order in accordance with the provisions of subsection (2) of Section 75-44-25.

SOURCES: Laws, 1977, ch. 409, § 12; Laws, 1981, ch. 354, § 9, eff from and after July 1, 1981.

Cross References — Filing of schedule of charges as prerequisite to licensure, see § 75-44-17.

Requirement of surety bond or other security as prerequisite to licensure, see § 75-44-29.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 14.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 8, 9.

§ 75-44-25. Suspension, cancellation or revocation of license; return of license.

(1) If a grain warehouseman is convicted of any crime involving fraud or deceit or if the commissioner determines that any grain warehouseman has violated any of the provisions of this chapter, or any of the rules and regulations adopted by the commissioner pursuant to this chapter, the commissioner may, at his discretion, suspend, cancel or revoke the license of such grain warehouseman.

(2) All proceedings for the suspension, cancellation or revocation of licenses shall be before the commissioner, and the proceedings shall be in accordance with rules and regulations which shall be adopted by the commissioner. No license shall be cancelled or revoked except after a hearing before the commissioner upon reasonable notice to the licensee and an opportunity to appear and defend. The commissioner may temporarily suspend the license of a licensee for good and reasonable cause before notice or hearing and the licensee shall be entitled to a hearing on such temporary suspension without undue delay. Whenever the commissioner shall suspend, cancel or revoke any license he shall prepare an order so providing which shall state the reason or reasons for such suspension, cancellation or revocation. Said order shall be sent, by certified mail, by the commissioner to the licensee at the address of the grain warehouse licensed. Within thirty (30) days after the mailing of said order, the licensee, if dissatisfied with the order of the commissioner, may appeal to the chancery court of the county where the grain warehouse is located by filing a written notice of appeal alleging the pertinent facts upon which such appeal is grounded. At the time of the filing of the appeal, the appellant shall give a bond for costs conditioned upon his prosecution of the appeal without delay and payment of all costs assessed against him. Appeal may be with supersedeas and shall be subject to the provisions of Section 11-51-31.

(3) In case a license issued to a grain warehouseman expires or is suspended, revoked or cancelled by the commissioner or his designated representative, such license shall be immediately returned to the commissioner and the grain warehouseman shall forthwith comply with the provisions of Section 75-44-67.

SOURCES: Laws, 1977, ch. 409, § 13; Laws, 1981, ch. 354, § 10, eff from and after July 1, 1981.

Cross References — Right of appeal to chancery court from denial of license after hearing before commissioner, see § 75-44-23.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 14.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 8, 9.

§ 75-44-27. Lost or destroyed licenses.

Upon satisfactory proof of the loss or destruction of a license issued to a grain warehouseman, a duplicate thereof, or a new license, may be issued under the same number.

SOURCES: Laws, 1977, ch. 409, § 14; Laws, 1981, ch. 354, § 11, eff from and after July 1, 1981.

§ 75-44-29. Warehouseman's bond; cancellation of bond by surety; self-insurance.

(1) Before any person is granted a license pursuant to Section 75-44-23 such person shall give a bond to the commissioner executed by the grain warehouseman as principal and by a corporate surety licensed to do business in this state as a surety. The bond shall be in favor of the commissioner for the benefit of all persons interested, their legal representatives, attorneys or assigns, conditioned upon the faithful compliance by the grain warehouseman with the provisions of this chapter and the rules and regulations of the State Department of Agriculture and Commerce applicable thereto. The aggregate liability of the surety to all depositors or storers of grain shall not exceed the sum of such bond. The bond may be cancelled at any time by the surety by giving written notice to the Commissioner of Agriculture and Commerce of its intention to cancel the bond and all liability thereunder shall terminate thirty-five (35) days after the mailing of such notice except that such notice shall not affect any claims arising under the bond, whether presented or not, before the effective date of the cancellation notice.

(2) In lieu of the bond required in subsection (1) of this section an applicant for a license may be a self-insurer by posting with the commissioner any of the following:

(a) Cash;

(b) Certificates of deposit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation;

(c) Irrevocable letters of credit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation;

(d) Federal treasury bills; or

(e) Notes, securities or bonds secured by the federal government or the State of Mississippi.

Self insurers shall post an amount equivalent to the amount of the bond required in Section 75-44-31.

SOURCES: Laws, 1977, ch. 409, § 15; Laws, 1981, ch. 354, § 12; Laws, 1987, ch. 319, eff from and after July 1, 1987.

Cross References — Requirement of net assets to be maintained for payment of indebtedness arising out of conduct of warehouse, see § 75-44-21.

Additional bond to cover unbonded obligations in case of amendment to license, see § 75-44-33.

Right to bring action against self-insured licensee to extent of amount posted in lieu of bond, see § 75-44-35.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses §§ 83 et seq.

20 Am. Jur. Legal Forms 2d, Warehouses, §§ 258:28 et seq. (warehouseman's bond).

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 24-34.

§ 75-44-31. Amount of warehouseman's bond; blanket bonds; increasing amount of bond.

(1) The amount of bond to be furnished for each grain warehouse shall be fixed at a rate of twenty-five cents (25¢) per bushel for the first one million (1,000,000) bushels of licensed capacity; twenty cents (20¢) per bushel for the next one million (1,000,000) bushels of licensed capacity; and fifteen cents (15¢) per bushel for all licensed capacity over two million (2,000,000) bushels; provided that in no case shall the amount of the bond be less than fifteen thousand dollars ($15,000.00) or more than one million dollars ($1,000,000.00), except as prescribed in subsection (3) of this section. The licensed capacity shall be equal to the maximum number of bushels of grain that the grain warehouse can accommodate for storage. In no event shall the liability of the surety accumulate for each successive license period during which this bond is in force, but shall be limited in the aggregate to the bond amount or changed by appropriate rider or endorsement.

(2) A grain warehouseman who is licensed or is applying for licenses to operate two (2) or more grain warehouses may give a single bond meeting the requirements of this chapter to cover all such grain warehouses within the state. In such cases all grain warehouses to be covered by the bond shall be deemed to be one (1) warehouse for purposes of determining the amount of bond required under subsection (1) of this section.

(3) In case of a deficiency in the net assets required by Section 75-44-21, there shall be added to the amount of the bond determined in accordance with subsection (1) of this section an amount equal to such deficiency. In any other case in which the commissioner finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond such further amount as is determined to be reasonable by the commissioner.

SOURCES: Laws, 1977, ch. 409, § 16; Laws, 1981, ch. 354, § 13; Laws, 1982, ch. 367, § 2, eff from and after July 1, 1982.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation made a correction to a statutory reference in subsection (1) by substituting "subsection (3) of this section" for "paragraph (3) of this section." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Requirement of net assets to be maintained for payment of indebtedness arising out of conduct of warehouse, see § 75-44-21.

Requirement of surety bond or other security as prerequisite to licensure, see § 75-44-29.

Additional bond to cover unbonded obligations in case of amendment to license, see § 75-44-33.

RESEARCH REFERENCES

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 24-34.

§ 75-44-33. Additional bond to cover obligations when application made for amendment to license.

If an application is made for an amendment to a license and no bond previously filed by the grain warehouseman under Sections 75-44-29 and 75-44-31 covers obligations arising during the period covered by such amendment, the grain warehouseman shall file with the commissioner an additional bond in such amount as may be determined by the commissioner.

SOURCES: Laws, 1977, ch. 409, § 17; Laws, 1981, ch. 354, § 14, eff from and after July 1, 1981.

Cross References — Requirement of net assets to be maintained for payment of indebtedness arising out of conduct of warehouse, see § 75-44-21.

§ 75-44-35. Actions on bonds or against self-insurers for failure to deliver grain to holder of warehouse receipt; costs.

(1) It shall be the duty of the grain warehouseman to deliver grain to the holder of a warehouse receipt within ten (10) days of the demand for the redemption of such receipt. In the event the grain warehouseman fails to deliver grain to the holder of a warehouse receipt within ten (10) days of the demand the holder of the warehouse receipt may make demand of the surety for payment under the bond. The surety has the responsibility to pay within fifteen (15) days following receipt by the surety of the notice of the demand for redemption. Any holder of a warehouse receipt issued by a grain warehouseman who has made demand for redemption of such receipt, which demand was, without lawful excuse, not satisfied within ten (10) days, shall notify the commissioner in writing and shall have the right to bring action against the grain warehouseman and the surety on the grain warehouseman's bond for payment of the market value of the grain represented by such warehouse receipt, such market value to be determined as of the date of the demand, plus legal interest accrued from the date of the demand. In the event the grain warehouseman is a self-insurer as provided in Section 75-44-29 the holder of a warehouse receipt shall have the right to bring action against the grain warehouseman to the extent of the amount posted in lieu of the bond. The commissioner shall pay to the holder of the warehouse receipt, to the extent of the bond posted, any judgment obtained by the holder of a warehouse receipt against a self-insurer. The commissioner may also pay to the holder of a

warehouse receipt the amount of the market value of the grain provided that the grain warehouseman agrees to such payment; provided, however, the license of the grain warehouseman shall be suspended upon such payment until such time as the warehouseman posts a bond as provided in this chapter or posts with the commissioner a sum equivalent to that paid by the commissioner on behalf of such warehouseman.

(2) In all actions in which judgment is rendered against any surety company under the provisions of this section, if it appears from evidence that the surety company has wilfully and without just cause refused to pay the loss upon demand, the court in rendering judgment shall allow the plaintiff the amount of the plaintiff's expenses including court costs and attorney's fees, to be recovered and collected as part of the costs. The amount of any payment of costs and attorney's fees under this subsection will not reduce the surety's remaining liability on its bond.

SOURCES: Laws, 1977, ch. 409, § 18; Laws, 1981, ch. 354, § 15, eff from and after July 1, 1981.

Cross References — Requirement of net assets to be maintained for payment of indebtedness arising out of conduct of warehouse, see § 75-44-21.

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Am Jur. 78 Am. Jur. 2d, Warehouses § 84.

24A Am. Jur. Pl & Pr Forms (Rev), Warehouses, Forms 1 et seq. (failure or refusal of warehouseman to deliver goods).

24A Am. Jur. Pl & Pr Forms (Rev), Warehouses, Forms 11 et seq. (destruction or damage of goods through negligence of warehouseman).

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 24-34.

§ 75-44-37. Warehouseman to keep stored grain adequately insured.

(1) Every grain warehouseman shall at all times keep the grain stored in the grain warehouse insured by an insurance company authorized to do business in this state. The grain is to be insured for its full market value against loss by fire, inherent explosion, lightning and windstorm, and failure to do so shall make the grain warehouseman liable for the same. All such policies shall provide that no cancellations shall be effective unless thirty (30) days' prior notice is given the commissioner.

(2) If fire, inherent explosion, lightning or windstorm shall destroy or damage all or part of the grain stored in any grain warehouse, the grain warehouseman shall, upon demand by the holder of any warehouse receipt for such grain, and upon being presented with the warehouse receipt, make settlement for the fair market value after deducting the warehouse charges.

SOURCES: Laws, 1977, ch. 409, § 19; Laws, 1981, ch. 354, § 16, eff from and after July 1, 1981.

RESEARCH REFERENCES

ALR. Presumptions and burden of proof or of evidence where goods stored in situation governed by Uniform Warehouse Receipts Act are stolen, or are damaged or lost by fire or water. 13 A.L.R.2d 681.

Warehouseman's liability for injury to or destruction of stored goods from floods, heavy rains, or the like. 60 A.L.R.2d 1097.

Sufficiency of warehouseman's precautions to protect goods against fire. 42 A.L.R.3d 908.

Am Jur. 78 Am. Jur. 2d, Warehouses § 116 et seq.

§ 75-44-39. Warehouseman to accept all grain tendered to him in usual course of business; inspection, weighing and grading of grain.

Every grain warehouseman shall receive for storage or shipment, so far as the available capacity for storage of the grain warehouse shall permit, all grain tendered to him in the usual course of business; provided, however, a grain warehouse owned and operated as a cooperative may decline to accept grain tendered by a nonmember if such cooperative reasonably believes that its available capacity will be required to serve the members of the cooperative. All such grain is to be inspected, weighed and graded by an inspector except that:

(a) The depositor and the grain warehouseman may agree upon a sample taken from the lot of grain to be offered for storage as being a true and representative sample.

(b) The depositor and the grain warehouseman may agree upon the grade of the grain offered for storage and a warehouse receipt may be issued on the agreed grade.

SOURCES: Laws, 1977, ch. 409, § 20; Laws, 1981, ch. 354, § 17, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 16.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 15.

§ 75-44-41. Records and accounts to be kept by warehouseman.

Every grain warehouseman shall keep in a place of safety complete, separate and correct records and accounts pertaining to the grain warehouse including, but not limited to, records and accounts of all grain received therein and withdrawn therefrom, all unissued receipts and tickets in its possession, copies of all receipts and tickets issued by it, and the receipts and tickets returned to and cancelled by it. Such records shall be retained by the grain warehouseman for a period of five (5) years.

SOURCES: Laws, 1977, ch. 409, § 21; Laws, 1981, ch. 354, § 18, eff from and after July 1, 1981.

§ 75-44-43. Annual examination of warehouse; financial statement to be furnished annually; audit; inspections; testing of scales.

(1) Every grain warehouse shall be examined by the commissioner each year. The cost of such examination shall be included in the annual license fee. The commissioner, at his discretion, may make additional examinations of any grain warehouse at any time. If any discrepancy is found as a result of additional examination, the cost of such examination is to be paid by the grain warehouseman.

(2) Every grain warehouse shall at least annually send to the commissioner a copy of its financial statement prepared by an accountant licensed by the State of Mississippi and sworn to by the accountant and grain warehouseman.

(3) The commissioner may, in his discretion, require an unqualified audit by an accountant licensed by the State of Mississippi as a requirement for licensing, and inspect the grain warehouse's business, mode of conducting the same, facilities, equipment, inventories, property, books, records, accounts, papers and minutes of proceedings held at such grain warehouse, and any other records deemed relevant to the operation of the grain warehouse by the commissioner.

(4) All scales used for the weighing of property in grain warehouses shall be subject to tests by any scale inspector duly appointed or authorized by the commissioner during regular business hours.

SOURCES: Laws, 1977, ch. 409, § 22; Laws, 1981, ch. 354, § 19; Laws, 1982, ch. 367, § 3, eff from and after July 1, 1982.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 5.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 11.

§ 75-44-45. Employment of grain inspector.

Each grain warehouse shall employ, during all regular business hours, a grain inspector (who may be the grain warehouseman himself if such grain warehouseman is a natural person) who shall be responsible for the accuracy of weights and grades noted on all warehouse receipts.

SOURCES: Laws, 1977, ch. 409, § 23; Laws, 1981, ch. 354, § 20, eff from and after July 1, 1981.

§ 75-44-47. Receipt of grain affecting condition of other stored grain.

(1) If the condition of any grain offered for storage is such that it probably will affect the condition of grain in the grain warehouse, the grain warehouseman shall not receive such grain for storage or store such grain, provided, however, that if the grain warehouse has separate bins or is equipped with proper conditioning apparatus, the grain warehouse may receive such grain for storage in such separate bins or may condition it and then store it in such a manner as will not lower the grade of other grain.

(2) It shall be the grain warehouseman's duty and obligation to condition and maintain the quantity and quality of all grain as receipted.

SOURCES: Laws, 1977, ch. 409, § 24; Laws, 1981, ch. 354, § 21, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am Jur. 24A Am. Jur. Pl & Pr Forms (Rev), Warehouses, Form 13 (allegation of complaint, petition or declaration as to depreciation of fungible commodities by mingling with inferior grades).

§ 75-44-49. Terms of warehouse receipts; receipt as evidence of ownership.

(1) Every receipt issued for grain stored in a grain warehouse shall conform to the requirements of Section 75-7-202 and in addition shall embody within its written or printed terms:

(a) A statement that the holder of the receipt or the depositor of the grain shall demand the delivery of the grain on or before a date not later than one (1) year from the date specified thereon by the grain warehouseman;

(b) The net weight, number of bushels, percentage of dockage and the grading factors and the grade.

(2) A grain warehouseman shall not insert any language in any warehouse receipt or make any contract with respect to any warehouse receipt which purports to limit the liabilities or responsibilities imposed on him by law.

(3) The possession of an indorsed warehouse receipt shall be prima facie evidence of grain in storage and the rightful ownership of such document and grain.

SOURCES: Laws, 1977, ch. 409, § 25; Laws, 1981, ch. 354, § 22; Laws, 1982, ch. 367, § 4, eff from and after July 1, 1982.

Cross References — Additional terms to be included where grain is accepted for shipment to another warehouse, see § 75-44-65.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 32.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries §§ 42, 43.

§ 75-44-51. Copies of warehouse receipts.

At least one (1) actual or skeleton copy of all receipts shall be made and all copies shall have clearly and conspicuously printed or stamped thereon the words "Copy-Not Negotiable."

SOURCES: Laws, 1977, ch. 409, § 26, eff from and after July 1, 1977.

§ 75-44-53. Commissioner to approve form of warehouse receipts; printing of warehouse receipts by state printer.

The form of all receipts shall be approved by the commissioner. The commissioner shall be authorized to have printed by the state printer all warehouse receipts issued by grain warehousemen.

SOURCES: Laws, 1977, ch. 409, § 27; Laws, 1981, ch. 354, § 23, eff from and after July 1, 1981.

§ 75-44-55. Issuance of new warehouse receipt for undelivered portion of grain.

If a grain warehouseman delivers only a part of a lot of grain for which he has issued a negotiable receipt under this chapter, he shall take up and cancel such receipt and issue a new receipt in accordance with the provisions of Sections 75-44-49 through 75-44-65 for the undelivered portion of grain.

SOURCES: Laws, 1977, ch. 409, § 28; Laws, 1981, ch. 354, § 24, eff from and after July 1, 1981.

RESEARCH REFERENCES

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 40.

§ 75-44-57. Delivery of grain pursuant to negotiable and nonnegotiable warehouse receipts.

A grain warehouseman shall not deliver grain for which he has issued a negotiable receipt until the receipt has been returned to him and cancelled, and shall not deliver grain for which he has issued a nonnegotiable receipt until he has received authority from the person lawfully entitled to such delivery, or his authorized agent.

SOURCES: Laws, 1977, ch. 409, § 29; Laws, 1981, ch. 354, § 25, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses §§ 36 et seq.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries §§ 108-111 et seq.

§ 75-44-59. Numbering of warehouse receipts.

All warehouse receipts issued by a grain warehouse shall be numbered consecutively, and no two (2) receipts bearing the same number shall be issued from the same warehouse during any one (1) year, except in the case of a lost or destroyed receipt.

SOURCES: Laws, 1977, ch. 409, § 30; Laws, 1981, ch. 354, § 26, eff from and after July 1, 1981.

§ 75-44-61. Warehouse receipts not to be issued except for actual deliveries nor for quantities greater than actually delivered.

No warehouse receipt shall be issued except upon actual delivery of grain into storage in the warehouse from which it purports to be issued, nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel o received for storage, nor shall more than one (1) receipt be issued for the same lot of grain, except in cases where a receipt for a part of a lot is desired, and then the aggregate receipts for a particular lot shall cover that lot and no more.

SOURCES: Laws, 1977, ch. 409, § 31, eff from and after July 1, 1977.

§ 75-44-63. Sale or pledge of warehouse receipts.

A grain warehouseman may make a valid sale or pledge of any warehouse receipts issued for grain of which the warehouseman is the owner, either solely or jointly or in common with others, and the recital of ownership in the receipt shall constitute notice of the right to sell or pledge the same and of the title or specific lien of the transferee or pledgee upon the warehouseman's grain represented by the receipts.

SOURCES: Laws, 1977, ch. 409, § 32; Laws, 1981, ch. 354, § 27, eff from and after July 1, 1981.

RESEARCH REFERENCES

ALR. Effectiveness, as pledge, of transfer of warehouse receipt. 53 A.L.R.2d 1406.

Am Jur. 78 Am. Jur. 2d, Warehouses §§ 59 et seq.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 65-72.

§ 75-44-65. Acceptance by warehouseman of grain for storage at another grain warehouse.

(1) If grain is offered for storage in any licensed grain warehouse and the grain warehouseman does not have storage space to handle the same, the grain warehouseman with the written consent of the owner may accept grain for shipment to another grain warehouse where storage is available.

(2) The receipt to cover grain to be transported to and stored in another grain warehouse shall embody within its written or printed terms, in addition to the requirements of Section 75-44-49, the name and location of the grain warehouse to which the grain will be shipped for storage.

SOURCES: Laws, 1977, ch. 409, § 33; Laws, 1981, ch. 354, § 28, eff from and after July 1, 1981.

§ 75-44-67. Notice by warehouseman to grain owners of discontinuance of operations or of suspension, revocation or cancellation of license.

Any person operating a grain warehouse who desires to discontinue such operation at the expiration of his license or whose license is suspended, revoked or cancelled by the commissioner or his designated representative shall notify the commissioner and all holders of warehouse receipts and all parties storing grain in the grain warehouse, if known, or if not known, by advertising in the newspaper or newspapers of largest general circulation in the community in which the grain warehouse is located once per week for three (3) consecutive weeks, at least thirty (30) days prior to the date of expiration of his license, of his intention to discontinue the grain warehouse business, and the owners of the grain shall remove, or cause to be removed, their grain from such grain warehouse before the expiration of the license.

SOURCES: Laws, 1977, ch. 409, § 34; Laws, 1981 ch. 354, § 29, eff from and after July 1, 1981.

Cross References — Suspension, cancellation or revocation of grain warehouseman's license and return of license to commissioner, see § 75-44-25.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses
§ 16.

§ 75-44-69. Information relating to affairs or transactions of warehouse not to be disclosed by commission inspectors or employees.

No inspector or employee of the commissioner's office shall disclose any information obtained by him in the course of his employment related to the affairs or transactions of any grain warehouse without first having obtained the express permission in writing of such grain warehouseman.

SOURCES: Laws, 1977, ch. 409, § 35; Laws, 1981, ch. 354, § 30, eff from and after July 1, 1981.

§ 75-44-71. Penalties.

(1) Any person who issues a warehouse receipt for grain without holding a valid grain warehouse license or who commits any willful violation of any provision of this chapter, shall be guilty of a felony, and upon conviction thereof, punishable by a fine of not more than twenty thousand dollars ($20,000.00) and/or imprisonment for not more than five (5) years.

(2) Any unintentional or negligent violation of this chapter shall be a misdemeanor, and upon conviction thereof, punishable by a fine of not more than five thousand dollars ($5,000.00) and/or imprisonment for not more than one (1) year.

SOURCES: Laws, 1977, ch. 409, § 36; Laws, 1981, ch. 354, § 31, eff from and after July 1, 1981.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Warehouses § 182.

CJS. 93 C.J.S., Warehousemen and Safe Depositaries § 172 et seq.

CHAPTER 45

Commercial Feeds and Grains

Article 1. Commercial Feeds. [Repealed]
Article 3. Grain. [Repealed]
Article 5. Commercial Feed Law 75-45-151
Article 7. Grain Dealers Law 75-45-301

ARTICLE 1.

COMMERCIAL FEEDS
[REPEALED].

§§ 75-45-1 through 75-45-27. Repealed.

Repealed by Laws, 1972, ch. 474, § 17, eff from and after January 1, 1973.

§§ 75-45-1 through 75-45-27. [Codes, 1930, §§ 4021-4034; 1942, §§ 4436-4449; Laws, 1928, Ex. ch. 78; Laws, 1942, ch. 257; Laws, 1946, ch. 225, §§ 1, 2; Laws, 1954, ch. 148; Laws, 1956, ch. 133; Laws, 1958, ch. 144; Laws, 1958, ch. 145, § 1; Laws, 1962, ch. 156, § 1; Laws, 1962, ch. 157; Laws, 1964, ch. 205, § 1; Laws, 1966, ch. 225, §§ 1, 2]

Editor's Note — Former Article 1 regulated commercial feeds. For current legislation of a similar nature, see Commercial Feed Law, § 75-45-151 et seq.

ARTICLE 3.

GRAIN
[REPEALED].

§§ 75-45-101 through 75-45-109. Repealed.

Repealed by Laws, 1972, ch. 474, § 17, eff from and after January 1, 1973.

§§ 75-45-101 through 75-45-109. [Codes, 1942, §§ 4449-01 to 4449-04; Laws, 1971, ch. 461, §§ 1-4]

Editor's Note — Former Article 3 pertained to inspection and certification of grain. For current provisions pertaining to grain, see Grain Dealers Law, § 75-45-301 et seq.

ARTICLE 5.

COMMERCIAL FEED LAW.

SEC.
75-45-151. Title.
75-45-153. Definitions.
75-45-155. Administration of article.
75-45-157. Promulgation of rules and regulations.
75-45-159. Registration.
75-45-161. Labeling.
75-45-163. Misbranding.

75-45-165. Adulteration.
75-45-167. Inspection fees.
75-45-169. Reports, records and penalty fees.
75-45-171. Disposition of fees and penalties.
75-45-173. Inspection, sampling, and analysis.
75-45-175. "Withdrawal from distribution" orders.
75-45-177. Condemnation and confiscation.
75-45-179. Prohibited acts.
75-45-181. Penalties.
75-45-182. Complaints against persons violating this article; administrative procedures; remedies; appeals.
75-45-183. When enforcement not required.
75-45-185. Duty of prosecuting attorneys.
75-45-187. Injunctive relief.
75-45-189. Repealed.
75-45-191. Revelation of trade secrets prohibited; application of Trade Secrets Act.
75-45-193. Cooperation with other entities.
75-45-195. Repealed.

§ 75-45-151. Title.

This article shall be known as the "Mississippi Commercial Feed Law of 1972."

SOURCES: Codes, 1942, § 4449-11; Laws, 1972, ch. 474, § 1, eff from and after Jan. 1, 1973.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former § 75-45-1.

1.-5. [Reserved for future use.]

6. Under former § 75-45-1.
In action under former statute (§§ 5236-5257, Hemingway's Code 1927), to recover sum made up by difference in guaranteed commercial value of cotton seed meal sold, and one-half of purchase price which plaintiff had paid, circuit court had no authority to reverse judgment of county court, where finding of facts by county judge in favor of defendant was not against overwhelming weight of evidence. Eagle Cotton Co. v. Blair, 153 Miss. 43, 120 So. 566 (1929).

§ 75-45-153. Definitions.

When used in this article the terms:

(a) "Person" includes any individual, partnership, corporation or association.

(b) "Distribute" means to offer for sale, sell, exchange, give away, or barter, commercial feed or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(c) "Distributor" means any person who distributes commercial feedstuffs as defined herein.

(d) "Commercial feed" means all materials distributed for use as feed or for mixing in feed except unmixed seed, whole or processed, when not adulterated within the meaning of paragraph (a) of Section 75-45-165. The commissioner and State Chemist by regulation may exempt from this definition, or from specific provisions of this article, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds or substances are not mixed with other materials, and are not adulterated within the meaning of paragraphs (a) through (d) of Section 75-45-165.

(e) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(f) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(g) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

(h) "Customer-formula feed" means commercial feed which consists of a mixture of commercial feeds and/or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(i) "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

(j) "Brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(k) "Product name" means the name of the commercial feed which identifies it as to kind, class or specific use.

(*l*) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(m) "Labeling" means all labels and other written, printed, or graphic matter (1) upon a commercial feed or any of its containers or wrappers (2) accompanying such commercial feed.

(n) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(o) "Percent" or "percentages" mean percentages by weights.

(p) "Official sample" means a sample of feed taken by the commissioner or his agent in accordance with the provisions of subsections (3), (4) and (5) of Section 75-45-173.

(q) "Contract feeder" means a person who as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(r) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

(s) "Pet" means any domesticated animal normally maintained in or near the household(s) of the owner(s) thereof.

(t) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including, but not limited to, gerbils, hamsters, canaries, psittacine, birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

(u) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(v) "Quantity statement" means the net weight (mass), net volume (liquid or dry) or count.

SOURCES: Codes, 1942, § 4449-13; Laws, 1972, ch. 474, § 3; Laws, 2001, ch. 555, § 1, eff from and after July 1, 2001.

RESEARCH REFERENCES

ALR. Products liability: animal feed or medicines. 29 A.L.R.4th 1045.

§ 75-45-155. Administration of article.

This article shall be administered by the commissioner of agriculture and commerce, hereinafter referred to as commissioner, and the state chemist, as specified in the following sections.

SOURCES: Codes, 1942, § 4449-12; Laws, 1972, ch. 474, § 2, eff from and after Jan. 1, 1973.

Cross References — Duties of commissioner of agriculture and commerce, see § 69-1-13.

State chemist's enforcement of commercial fertilizer law, see § 75-47-3.

§ 75-45-157. Promulgation of rules and regulations.

(1) The commissioner and State Chemist may promulgate such rules and regulations for commercial feeds and pet foods as are specifically authorized in this article and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this article. In the interest of uniformity the commissioner and State Chemist shall adopt by regulation, unless they determine that they are inconsistent with the provisions of this article or are not appropriate to conditions which exist in this state, the following:

(a) The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control officials and published in the official publication of that organization; and

(b) Any regulation promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act (21 USCS Section 301 et seq.); provided, that the commissioner and State Chemist would have the authority under this article to promulgate such regulations.

(2) Before the issuance, amendment, or repeal of any rule or regulation authorized by this article, the commissioner and State Chemist shall publish the proposed rule or regulation, amendment, or notice to repeal an existing rule or regulation in a manner reasonably calculated to give interested parties,

including all current registrants, adequate notice and they shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the commissioner and State Chemist shall take appropriate action to issue the proposed rule or regulation or to amend or repeal an existing rule or regulation. The provisions of this subsection notwithstanding, if the commissioner and State Chemist pursuant to the authority of this article, adopt the official definitions of feed ingredients or official feed terms as adopted by the Association of American Feed Control officials, or regulations promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act, any amendment or modification adopted by said association or by the Secretary of Health and Human Services in the case of regulations promulgated pursuant to the Federal Food, Drug, and Cosmetic Act, shall be adopted automatically under this article without regard to the publications of the notice required by this subsection, unless the commissioner and State Chemist by order specifically determine that said amendment or modification shall not be adopted.

SOURCES: Codes, 1942, § 4449-20; Laws, 1972, ch. 474, § 10; Laws, 2001, ch. 555, § 2, eff from and after July 1, 2001.

§ 75-45-159. Registration.

(1) No person shall manufacture or distribute a commercial or customer-formula feed for sale in this state, unless he has filed with the commissioner and State Chemist on forms provided by the commissioner, his name, place of business and location of each manufacturing facility, has paid his registration fee of One Hundred Dollars ($100.00) for each location and has been issued his facility registration permit by the department.

(2) The registration and fee is due on or before January 1 of each year. A late fee of Fifty Dollars ($50.00) shall be charged for any facility registration that is more than thirty (30) days late. The funds shall be deposited monthly in the State Treasury. A registration shall continue in effect unless it is cancelled by the commissioner and State Chemist pursuant to subsection (3) of this section.

(3) The commissioner and the State Chemist may refuse registration of any feed manufacturing facility not in compliance with this article and to cancel any registration subsequently found not to be in compliance with any provision of this article. No registration shall be refused, cancelled or suspended unless the registrant shall have been given an opportunity to be heard before the commissioner and State Chemist and to amend his application in order to comply with the requirements of this article.

SOURCES: Codes, 1942, § 4449-14; Laws, 1972, ch. 474, § 4; Laws, 2001, ch. 555, § 3, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of (3). The word "of" was deleted so that "not in compliance with of this article" reads "not in compliance with this article." The Joint Committee ratified this correction at its August 5, 2008, meeting.

§ 75-45-161. Labeling.

A commercial feed shall be labeled as follows:

(1) In case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following information:

(a) The quantity statement.

(b) The product name and the brand name, if any, under which the commercial feed is distributed.

(c) The guaranteed analysis, stated in such terms which the commissioner and State Chemist by regulation determine are required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the AOAC International.

(d) The common or usual name of each ingredient used in the manufacture of the commercial feed; the commissioner and State Chemist by regulation may permit the use of a collective term for a group of ingredients which perform a similar function, or they may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if they find that such statement is not required in the interest of consumers.

(e) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(f) Adequate directions for use of all commercial feeds containing drugs and for such other feeds as the commissioner and State Chemist may require by regulation as necessary for their safe and effective use.

(g) Such precautionary statements as the commissioner and State Chemist by regulation determine are necessary for the safe and effective use of the commercial feed.

(2) In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip, or other shipping document, bearing the following information:

(a) Name and address of the manufacturer.

(b) Name and address of the purchaser.

(c) Date of delivery.

(d) The product name and brand name, if any, and the net weight of each registered commercial feed used in the mixture, and the net weight of each other ingredient used.

(e) Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the commissioner and State Chemist may require by regulation as necessary for their safe and effective use of the customer-formula feed.

SOURCES: Codes, 1942, § 4449-15; Laws, 1972, ch. 474, § 5; Laws, 2001, ch. 555, § 4, eff from and after July 1, 2001.

RESEARCH REFERENCES

ALR. Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale. 57 A.L.R. 686.

§ 75-45-163. Misbranding.

A commercial feed shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is distributed under the name of another commercial feed.

(c) If it is not labeled as required in Section 75-45-161.

(d) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the commissioner and state chemist.

(e) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

SOURCES: Codes, 1942, § 4449-16; Laws, 1972, ch. 474, § 6, eff from and after Jan. 1, 1973.

§ 75-45-165. Adulteration.

A commercial feed shall be deemed to be adulterated:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; however, in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act, other than one which is a pesticide chemical in or on a raw agricultural commodity, or a food additive;

(c) If it is, or it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act; or

(d) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act. However, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice. In such case the concentration of such residue in the processed feed shall not exceed the tolerance prescribed for the raw agricultural commodity. Feeding of such processed feed shall not result, or be likely to result, in a pesticide residue, unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act, in the edible product of the animal.

(e) If it is, or it bears or contains, any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug and Cosmetic Act.

(f) If it is, or it bears or contains, any new animal drug which is unsafe within the meaning of Section 512 of the Federal Food, Drug and Cosmetic Act.

(g) If it consist in whole or in part of any filthy, putrid or decomposed substance, or it is otherwise unfit for feed;

(h) If it has been prepared, packed or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;

(i) It is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter which is unsafe within the meaning of Section 402(a)(1) or (2) of the Federal Food, Drug and Cosmetic Act;

(j) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(k) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug and Cosmetic Act.

(*l*) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(m) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling. For the purposes of adjudging adulteration under this paragraph, the commissioner shall be guided by "permitted analytical variations" from the guaranteed value for each feed component or analytically measurable index of the feed quality. Such permitted analytical variations from guaranteed values shall be set forth by regulation by the commissioner and State Chemist.

(n) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the commissioner and State Chemist to assure that the drug meets the requirement of this article as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the commissioner and State Chemist shall adopt the current good manufacturing practice regulations for Type A medicated articles and Type B and Type C medicated feed established under authority of the Federal Food, Drug, and Cosmetic Act, unless they determine that they are not appropriate to the conditions which exist in this state.

(o) If it contains viable weed seeds in amounts exceeding the limits which the commissioner and State Chemist shall establish by rule or regulation.

SOURCES: Codes, 1942, § 4449-17; Laws, 1972, ch. 474, § 7; Laws, 2001, ch. 555, § 5, eff from and after July 1, 2001.

Federal Aspects — Federal Food, Drug, and Cosmetic Act, see the Act of June 25, 1938, 52 Stat. 1040, codified as 21 USCS §§ 301 et seq.

Product of a diseased animal or an animal that has died otherwise than by slaughter that is unsafe within the meaning of § 402(a)(1) or (2) of the Federal Food, Drug and Cosmetic Act, see 21 USCS § 342(a)(1) and (2).

Radiation that is in conformity with the regulation or exemption in effect pursuant to the Federal Food, Drug and Cosmetic Act, see 21 USCS § 348.

New animal drug that is unsafe within the meaning of § 512 of the Federal Food, Drug and Cosmetic Act, see 21 USCS § 360b.

Color additive that is unsafe within the meaning of § 706 of the Federal Food, Drug and Cosmetic Act, see 21 USCS § 379e.

§ 75-45-167. Inspection fees.

(1) An inspection fee at the rate of Twenty-five Cents (25¢) per ton shall be paid on commercial feeds distributed in this state by the person whose name appears on the label as the manufacturer, guarantor or distributor, subject to the following:

(a) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.

(b) No fee shall be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.

(c) No fee shall be paid on commercial feeds which are used as ingredients for the manufacture of commercial feeds. If the fee has already been paid, credit shall be given for such payment.

(2) In the case of a commercial feed which is distributed in the state only in packages of ten (10) pounds or less, an annual fee of Twenty-five Dollars ($25.00) per brand shall be paid on or before January 1 of each year in lieu of the inspection fee specified in subsection (1).

(3) The minimum inspection fee shall be Twenty Dollars ($20.00) annually.

(4) Any feed manufactured in the state which is used by a distributor or his contract feeders to feed his own livestock, poultry, or fish, or feed which is distributed in tonnage bulk to any commercial grower of an aquatic species, including, but not limited to, catfish, shall be exempt from the inspection fee on both purchased ingredients and finished feed. To qualify for the above

exemption, a permit must be obtained from the commissioner annually and the permit used to obtain exemption on feed ingredients. Any services the Mississippi State Chemical Laboratory or the Mississippi Department of Agriculture and Commerce provide for permit holders will be paid for according to mutually agreeable prices between both parties.

SOURCES: Codes, 1942, § 4449-19; Laws, 1972, ch. 474, § 9; Laws, 1978, ch. 305, § 1; Laws, 1997, ch. 373, § 1; Laws, 2001, ch. 555, § 6, eff from and after July 1, 2001.

§ 75-45-169. Reports, records and penalty fees.

Each person who is liable for the payment of an inspection fee shall:

(a) File, not later than the last day of January of each year, an annual statement, setting forth the number of net tons of commercial feeds distributed in this state during the preceding calendar year, and upon filing such statement shall pay the inspection fee at the rate stated in Section 75-45-167. Inspection fees which are due and owing and have not been remitted to the Department of Agriculture and Commerce within fifteen (15) days following the due date shall have a penalty fee of ten percent (10%) (minimum Ten Dollars ($10.00)) added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the department from taking other actions as provided in this article.

(b) Keep such records as may be necessary or required by the commissioner to indicate accurately the tonnage of commercial feed distributed in this state; the commissioner shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of the facilities' permit to sell commercial feeds in Mississippi.

SOURCES: Codes, 1942, § 4449-19; Laws, 1972, ch. 474, § 9; Laws, 2001, ch. 555, § 7, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation substituted "feeds" for "fees" in subsection (b). The Joint Committee ratified the correction at its May 16, 2002, meeting.

§ 75-45-171. Disposition of fees and penalties.

The commissioner of agriculture and commerce shall deposit with the state treasurer to the credit of the general fund all funds received by him as registration and inspection fees and, by act of the legislature, such funds shall be used for defraying the cost of the inspection and analysis of commercial feeds as provided herein.

All penalties collected, whether from fines or sales of the condemnation of the articles defined above, shall be deposited with the state treasurer to the credit of the general fund. It shall be the duty of the commissioner of agriculture and commerce to include in his annual report an itemized statement of all such funds so collected and deposited.

SOURCES: Codes, 1942, § 4449-19; Laws, 1972, ch. 474, § 9, eff from and after Jan. 1, 1973.

§ 75-45-173. Inspection, sampling, and analysis.

(1) For the purpose of enforcement of this article, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the commissioner, upon presenting appropriate credentials, and a written or oral notice to the owner, operator, or agent in charge, are authorized: (a) to enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed or held for distribution, or to enter any vehicle being used to transport or hold such feeds; and (b) to inspect during normal business hours and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling thereon. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice regulations established under paragraph (d) of Section 75-45-165.

(2) A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(3) If the officer or employee making such inspection of a factory, warehouse, vehicle or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises or vehicle he, upon request, shall give to the owner, operator, or agent in charge, a receipt describing the samples obtained.

(4) If the owner of any factory, warehouse, vehicle or establishment described in subsection (1), or his agent, refuses to admit the commissioner or his agent to inspect in accordance with subsections (1) and (2), the commissioner is authorized to obtain from any state court a warrant directing such owner or his agent to submit the premises described in such warrant to inspection.

(5) For the purpose of the enforcement of this article, the commissioner or his duly designated agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

(6) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International, or in accordance with other generally recognized methods.

(7) The results of all analyses of official samples shall be forwarded by the State Chemist to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty (30) days following receipt of the analysis the State Chemist shall furnish to the registrant a portion of the sample concerned.

(8) The commissioner and State Chemist, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in paragraph (p) of Section 75-45-153 and obtained and analyzed as provided for in subsections (3), (5), and (6) of this section.

SOURCES: Codes, 1942, § 4449-21; Laws, 1972, ch. 474, § 11; Laws, 2001, ch. 555, § 8, eff from and after July 1, 2001.

RESEARCH REFERENCES

ALR. Products liability: animal feed or medicines. 29 A.L.R.4th 1045.

§ 75-45-175. "Withdrawal from distribution" orders.

When the commissioner or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this article or of any of the prescribed regulations under this article, he may, according to his judgment of the gravity of the offense and regulations promulgated by the commissioner and State Chemist issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the commissioner or the court. The commissioner shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty (30) days, the commissioner may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

SOURCES: Codes, 1942, § 4449-22; Laws, 1972, ch. 474, § 12; Laws, 1973, ch. 386, § 2(a); Laws, 2001, ch. 555, § 9, eff from and after July 1, 2001.

§ 75-45-177. Condemnation and confiscation.

Any lot of commercial feed not in compliance with the provisions of this article and regulations issued thereunder shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this article and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. Provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this article.

SOURCES: Codes, 1942, § 4449-22; Laws, 1972, ch. 474, § 12; Laws, 1973, ch. 386, § 2(b), eff from and after passage (approved March 27, 1973).

§ 75-45-179. Prohibited acts.

The following acts and the causing thereof within the State of Mississippi are hereby prohibited:

(a) The manufacture or distribution of any commercial feed that is adulterated or misbranded.

(b) The adulteration or misbranding of any commercial feed.

(c) The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks and hulls, which are adulterated within the meaning of paragraph (a) of Section 75-45-165.

(d) The removal or disposal of a commercial feed in violation of an order under Section 75-45-175 or 75-45-177.

(e) The failure or refusal to register in accordance with Section 75-45-159.

(f) The violation of Section 75-45-191.

(g) Failure to pay inspection fees and file reports as required by Sections 75-45-167 and 75-45-169.

(h) Failure to pay penalties assessed under Section 75-45-181 or any rules or regulations issued thereunder.

SOURCES: Codes, 1942, § 4449-18; Laws, 1972, ch. 474, § 8; Laws, 1973, ch. 386, § 1; Laws, 2001, ch. 555, § 10, eff from and after July 1, 2001.

§ 75-45-181. Penalties.

Any person violating any of the provisions of this article or the rules and regulations made by the commissioner and State Chemist pursuant thereto is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a term not to exceed six (6) months, or both.

SOURCES: Codes, 1942, § 4449-23; Laws, 1972, ch. 474, § 13; Laws, 1973, ch. 386, § 2(a, b); Laws, 2001, ch. 555, § 11, eff from and after July 1, 2001.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former § 75-45-1.

1.-5. [Reserved for future use.]

6. Under former § 75-45-1.

A former statute imposing a penalty for selling adulterated cotton seed meal without noting the adulteration on the package was not unconstitutional in failing to inform an accused of the nature and cause of the accusation against him, in that it did not prescribe any standard of adulteration. Alcorn Cotton Oil Co. v. State, 100 Miss. 299, 56 So. 397 (1911).

§ 75-45-182. Complaints against persons violating this article; administrative procedures; remedies; appeals.

(1) When a complaint is made against a person for violating any of the provisions of this article, or any of the rules and regulations promulgated hereunder, the Director of the Commercial Feed Division within the Mississippi Department of Agriculture and Commerce, or his designee, shall act as the reviewing officer. The complaint shall be in writing and shall be filed in the office of the Mississippi Department of Agriculture and Commerce ("department"). The reviewing officer shall deliver to the accused a copy of the complaint along with any supporting documents and a request for the accused to respond to the charges within thirty (30) days after service of the complaint upon the accused. Notification to the accused may be accomplished by certified mail or by an of the methods provided in Rule 4 of the Mississippi Rules of Civil Procedure. The accused shall respond in the form of a written answer along with all supporting documents. Upon expiration of the thirty-day period, the reviewing officer shall examine all pleadings and documents filed in the case for the purpose of determining the merit of the complaint, or the lack thereof. No evidentiary hearing shall be held at this stage.

If the reviewing officer determines that the complaint lacks merit, he may dismiss same. If he finds that there is substantial evidence showing that a violation of this article or the rules and regulations promulgated hereunder has occurred, the reviewing officer may impose any or all of the following penalties upon the accused: (a) levy a civil penalty in an amount of no more than One Thousand Dollars ($1,000.00) for each violation; (b) revoke or suspend any permit, license or registration issued to the accused under the terms of this article and accompanying regulations; (c) issue a stop sale order; (d) issue a "withdrawal from distribution" order; (e) require the accused to relabel any product offered for sale which is not labeled in accordance with the provisions of this article; or (f) seize any product that is not in compliance with this article and destroy, sell or otherwise dispose of the product and apply the proceeds of any such sale to the costs herein and any civil penalties levied hereunder, with the balance to be paid according to the law. If any costs or penalties assessed hereunder have not been paid, they may be collected through a court system. A copy of the reviewing officer's decision shall be sent to the accused by certified mail. Either the accused or the department may appeal the decision of the reviewing officer to the commissioner by filing a notice of appeal with the department within thirty (30) days of receipt of the reviewing officer's decision. If no appeal is taken from the order of the reviewing officer within the allotted time, the order shall then become final.

(2) In the event of an appeal, the commissioner, or his designee, shall conduct a hearing relative to the charges. At the hearing before the commissioner, or his designee, the matter shall be heard de novo; the department shall have subpoena power, the witnesses shall be placed under oath and shall be subject to direct and cross examination and the testimony shall be recorded. Compliance with such subpoenas may be enforced by any court of general jurisdiction in this state. The commissioner, or his designee, shall receive and hear all the evidence and arguments offered by both parties and shall afford the accused a full opportunity to present all his defenses.

Within a reasonable time after the hearing, the commissioner, or his designee, shall render an opinion, which either affirms, reverses or amends the order of the reviewing officer in whole or in part, and the order shall be final. A copy of the commissioner's order shall be sent to the accused by certified mail.

(3) Either the accused or the department may appeal the decision of the commissioner or his designee to the circuit court of the county of the residence of the accused, or if the accused is a nonresident of the State of Mississippi, to the Circuit Court of the First Judicial District of Hinds County, Mississippi. The appellant shall have the obligation of having the record transcribed and filing same with the circuit court. The appeal shall otherwise be governed by all applicable laws and rules affecting appeals to the circuit court. If no appeal is perfected within the required time, the decision of the commissioner, or his designee, shall then become final.

(4) The decision of the circuit court may then be appealed by either party to the Mississippi Supreme Court in accordance with the existing law and rules affecting such appeals.

(5) When any violation of this article or the rules and regulations promulgated hereunder occurs or is about to occur that presents a clear and present danger to the public health, safety or welfare requiring immediate action, the commissioner or any of the department's field inspectors may issue an order to be effective immediately before notice and a hearing that imposes any or all of the following penalties upon the accused: (a) a stop sale order; (b) a "withdrawal from distribution" order; (c) a requirement that the accused relabel a product that he is offering for sale which is not labeled in accordance with this article; or (d) the seizure of any product that is not in compliance with this article and the destruction, sale or disposal of the product and the application of the proceeds of such sale to the costs and civil penalties herein, with the balance to be paid according to law. The order shall be served upon the accused in the same manner that the summons and complaint may be served upon him. The accused shall then have thirty (30) days after service of the order upon him within which to request an informal administrative review before the reviewing officer. If the accused makes such a request within the required time, the reviewing officer shall provide an informal administrative review to the accused within ten (10) days after such request is made. If the

accused does not request an informal administrative review within such time, then he will be deemed to have waived his right to same. At the informal administrative review, subpoena power shall not be available, witnesses shall not be sworn nor be subject to cross-examination and there shall be no court reporter or record made of the proceedings. Each party may present its case in the form of documents, oral statements or any other method. The rules of evidence shall not apply. The reviewing officer's decision shall be in writing, and it shall be sent to the accused by certified mail. If either party is aggrieved by the order of the reviewing officer, he may appeal to the commissioner for a full evidentiary hearing in accordance with the procedures described in subsection (2) of this section, except that there shall be no requirement for a written complaint or answer to be filed by the parties. Such appeal shall be perfected by filing a notice of appeal with the commissioner within thirty (30) days after the order of the reviewing officer is served on the appealing party. The hearing before the commissioner, or his designee, shall be held within a reasonable time after the appeal has been perfected. Failure to perfect an appeal within the allotted time shall be deemed a waiver of such right.

SOURCES: Laws, 2001, ch. 555, § 12, eff from and after July 1, 2001.

Cross References — Notification to the accused under the Mississippi Rules of Civil Procedure, see Miss. R. Civ. P. 4.

§ 75-45-183. When enforcement not required.

Nothing in this article shall be construed as requiring the commissioner or his representative to: (a) report for prosecution; (b) institute seizure proceedings; (c) issue a withdrawal from distribution order; or (d) hold an administrative hearing as a result of minor violations of this article, or when he believes the public interest will best be served by suitable notice of warning in writing.

SOURCES: Codes, 1942, § 4449-23; Laws, 1972, ch. 474, § 13; Laws, 1973, ch. 386, § 2(c); Laws, 2001, ch. 555, § 13, eff from and after July 1, 2001.

§ 75-45-185. Duty of prosecuting attorneys.

It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

SOURCES: Codes, 1942, § 4449-23; Laws, 1972, ch. 474, § 13; Laws, 1973, ch. 386, § 2(d); Laws, 2001, ch. 555, § 14, eff from and after July 1, 2001.

§ 75-45-187. Injunctive relief.

The commissioner is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule or regulation promulgated under this article notwithstanding the existence of other remedies at law. Said injunction shall be issued without bond.

SOURCES: Codes, 1942, § 4449-23; Laws, 1972, ch. 474, § 13; Laws, 1973, ch. 386, § 2(e), eff from and after passage (approved March 27, 1973).

§ 75-45-189. Repealed.

Repealed by Laws, 2001, ch. 555, § 15, eff from and after July 1, 2001.

[Codes, 1942, § 4449-23; Laws, 1972, ch. 474, § 13; Laws, 1973, ch. 386, § 3(f), eff from and after passage (approved March 27, 1973).]

Editor's Note — Former § 75-45-189 provided for judicial review of an order made under the Mississippi Commercial Feed Law.

§ 75-45-191. Revelation of trade secrets prohibited; application of Trade Secrets Act.

Any person who uses to his own advantage, or reveals to other than the commissioner and state chemist, or officers of the Mississippi Department of Agriculture and Commerce and Mississippi State Chemical Laboratory, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this article, concerning any method, record, formulation or process which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall be punished according to law. In addition to the criminal remedy set forth herein, remedies for misappropriation of a trade secret shall be governed by the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19. This prohibition shall not be deemed as prohibiting the commissioner and state chemist, or their duly authorized agents, from exchanging information of a regulatory nature with duly appointed officials of the United States Government, or of other states, who are similarly prohibited by law from revealing this information.

SOURCES: Codes, 1942, § 4449-23; Laws, 1972, ch. 474, § 13; Laws, 1973, ch. 386, § 3(g); Laws, 1990, ch. 442, § 16, eff from and after July 1, 1990.

RESEARCH REFERENCES

ALR. Proper measure and elements of damages for misappropriation of trade secret. 11 A.L.R.4th 12.

What constitutes "trade secrets" exempt from disclosure under state freedom of information act. 27 A.L.R.4th 773.

What are "trade secrets" within § 6(f) of the Federal Trade Commission Act (15 USCS § 46(f)) not subject to publication by the Commission. 50 A.L.R. Fed. 590.

What constitutes "trade secrets and commercial or financial information obtained from person and privileged or confidential," exempt from disclosure under Freedom of Information Act (5 USCS § 552 (b)(4)) (FOIA). 139 A.L.R. Fed. 225.

What are administrative staff manuals and instructions to staff that affect members of public that must be disclosed under Freedom of Information Act (FOIA) (5 USCS § 552 (a)(2)(C)). 139 A.L.R. Fed. 299.

§ 75-45-193. Cooperation with other entities.

The commissioner and state chemist may cooperate with and enter into agreements with governmental agencies of this state, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this article.

SOURCES: Codes, 1942, § 4449-24; Laws, 1972, ch. 474, § 14, eff from and after Jan. 1, 1973.

§ 75-45-195. Repealed.

Repealed by Laws, 2001, ch. 555, § 16, eff from and after July 1, 2001.

[Codes, 1942, § 4449-25; Laws, 1972, ch. 474, § 15, eff from and after Jan. 1, 1973.]

Editor's Note — Former § 75-45-195 required the Commissioner of Agriculture to publish annually information concerning sales of commercial feed.

ARTICLE 7.

GRAIN DEALERS LAW.

SEC.

75-45-301.	Title.
75-45-303.	Definitions.
75-45-304.	Licensing requirements for grain dealers.
75-45-305.	Surety bond; certificate of deposit; letter of credit.
75-45-307.	Issuance and renewal of license.
75-45-309.	Examinations; inspections; suspension or revocation of license; hearings.
75-45-311.	Failure to make payment to producer.
75-45-313.	Commissioner's powers and duties; rules and regulations.
75-45-315.	Prohibited acts; penalties; injunctions.

§ 75-45-301. Title.

This article shall be known as the "Mississippi Grain Dealers Law of 1978."

SOURCES: Laws, 1978, ch. 423, § 1, eff from and after July 1, 1978.

Cross References — Agriculture and horticulture, generally, see §§ 69-1-1 et seq.

§ 75-45-303. Definitions.

The following terms shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Person" shall mean any person, firm, association or corporation.

(b) "Grain" shall mean all grains for which standards have been established pursuant to the United States Grain Standards Act as amended, and rice as defined by the Agriculture Marketing Act of 1946, as amended.

(c) "Grain dealer" shall mean any person engaged in the business of buying grain from producers thereof for resale or for milling or processing. A producer of grain buying grain for his own use as seed or feed shall not be considered as being engaged in the business of buying grain for resale or for milling or processing.

(d) "Producer" shall mean the owner, tenant or operator of land in this state who has an interest in and receives all or any part of the proceeds from the sale of the grain produced thereon.

(e) "Department" shall mean the Mississippi Department of Agriculture and Commerce.

(f) "Commissioner" shall mean the Commissioner of the Mississippi Department of Agriculture and Commerce, or his designated representative.

SOURCES: Laws, 1978, ch. 423, § 2, eff from and after July 1, 1978.

Federal Aspects — United States Grain Standards Act, see 7 USCS § 71 et seq. Agriculture Marketing Act of 1946, see 7 USCS § 1621 et seq.

§ 75-45-304. Licensing requirements for grain dealers.

No person shall operate as a grain dealer without first having obtained a license pursuant to this article; provided, however, that grain dealers licensed under the provisions of the United States Warehouse Act, as amended, or the Mississippi Grain Warehouse Law shall not be required to have a license issued pursuant to this article.

SOURCES: Laws, 1981, ch. 354, § 32, eff from and after July 1, 1981.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by substituting "a license issued pursuant to this article" for "a license issued pursuant to this chapter." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Mississippi Grain Warehouse Law, see § 75-44-1 et seq.

§ 75-45-305. Surety bond; certificate of deposit; letter of credit.

(1) Every person licensed as a grain dealer shall have filed with the department a surety bond signed by the dealer as principal and by a responsible company authorized to execute surety bonds within the State of Mississippi. A grain dealer may file with the department, in lieu of a surety bond, a certificate of deposit or irrevocable letter of credit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation, payable to the commissioner, as trustee. The principal amount of the certificate of deposit or the amount of the letter of credit shall be the same as that

required for a surety bond under this article and the interest thereon shall be made payable to the purchaser thereof. Such bond shall be a principal amount (to the nearest One Thousand Dollars ($1,000.00)) equal to ten percent (10%) of the aggregate dollar amount paid, by the dealer to producers for grain purchased from them during the dealer's last completed fiscal year or in the case of a dealer who has been engaged in business as a grain dealer for less than one (1) year or who has not theretofore engaged in such business, ten percent (10%) of the estimated aggregate dollar amount to be paid by the dealer to producers for grain purchased from them during the next fiscal year. Such bond shall not be less than Twenty-five Thousand Dollars ($25,000.00) nor more than One Hundred Thousand Dollars ($100,000.00), except as otherwise authorized by this article. The commissioner shall determine the sufficiency of any letter of credit.

(2) The commissioner may, when he questions a grain dealer's ability to pay producers for grain purchased, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the commissioner. Failure to post such additional bond or certificate of deposit or irrevocable letter of credit, constitutes grounds for suspension or revocation of a license issued under this article.

(3) Any required bond or bonds shall be executed by the grain dealer as principal and by a corporate surety licensed to do business in this state as a surety. The bond shall be in favor of the commissioner for the benefit of all persons interested, their legal representatives, attorneys or assigns, conditioned upon the faithful compliance by the grain dealer with the provisions of this article and the rules and regulations of the State Department of Agriculture and Commerce applicable thereto. The aggregate liability of the surety shall not exceed the sum of such bond. The bond may be cancelled at any time by the surety by giving written notice to the commissioner of its intention to cancel the bond and all liability thereunder shall terminate sixty (60) days after the mailing of such notice except that such notice shall not affect any claims arising under the bond, whether presented or not, before the effective date of the cancellation notice.

(4) Any grain dealer who is of the opinion that his net worth and assets are sufficient to guarantee payment to producers for grain purchased by him may request the commissioner to be relieved of the obligation of filing a bond in excess of the minimum bond of Twenty-five Thousand Dollars ($25,000.00). Such request shall be accompanied by a financial statement of the applicant made within six (6) months of the date of such request certified by a certified public accountant. If such financial statement discloses net assets and a net worth of an amount equal to at least three (3) times the amount of the bond required by this article and the commissioner is otherwise satisfied as to the financial ability and resources of the applicant, the commissioner may waive that portion of the required bond in excess of Twenty-five Thousand Dollars ($25,000.00). However, in the case of a grain dealer whose net worth is not equal to three (3) times the amount of bond required, the commissioner may allow such grain dealer to waive in One Thousand Dollar ($1,000.00) incre-

ments a portion of the bond required in excess of Twenty-five Thousand Dollars ($ 25,000.00). The percentage factor to be applied to the bond required in excess of Twenty-five Thousand Dollars ($25,000.00) shall be determined by dividing actual net worth by the net worth required to waive all bond in excess of Twenty-five Thousand Dollars ($25,000.00). If the result of this computation provides a percentage factor of eighty percent (80%) or greater, then that same percentage of the bond in excess of Twenty-five Thousand Dollars ($25,000.00) may be waived. The grain dealer shall then provide to the commissioner a surety bond in the amount of Twenty-five Thousand Dollars ($25,000.00) plus any additional bond required in excess thereof.

(5) Any grain dealer who purchases grain from producers only in connection with or as an incident to some other business and whose total purchases of grain from producers during any fiscal year do not exceed an aggregate amount of One Hundred Thousand Dollars ($100,000.00) may satisfy the bonding requirements of this article by filing with the commissioner a bond, or certificate of deposit or irrevocable letter of credit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation, at the rate of One Thousand Dollars ($1,000.00) for each Ten Thousand Dollars ($10,000.00) or fraction thereof of the dollar amount to be purchased, with a minimum bond, certificate of deposit or irrevocable letter of credit of One Thousand Dollars ($1,000.00) and a current financial statement.

(6) Failure of a grain dealer to file a bond, or certificate of deposit, or letter of credit, and to keep such bond, certificate of deposit or line of credit in force, or to maintain assets adequate to assure payment to producers for grain purchased from them shall be grounds for the suspension or revocation of a license issued under this article.

(7) When the commissioner has determined that a grain dealer has defaulted payment to producers for grain which he has purchased from them, the commissioner shall determine through appropriate legal procedures the producers and the amount of defaulted payment and as trustee of the bond shall immediately after such determination call for the dealer's surety bond or bonds, or other pledged financial assets, to be paid to him for distribution to those producers who should receive the benefits. Should the defaulted amount owed the producers be less than the principal amount of the bond or bonds or pledged financial assets, then the surety bank, or banking corporation shall be obligated to pay only the amount of the default.

SOURCES: Laws, 1978, ch. 423, § 3; Laws, 1987, ch. 316, eff from and after July 1, 1987.

§ 75-45-307. Issuance and renewal of license.

If the department is satisfied:

(a) that the applicant is of good business reputation,

(b) that the applicant has adequate bonding under Section 75-45-305,

(c) that the applicant maintains a permanent business location in this state, and

(d) that the applicant has sufficient financial resources to guarantee payment to producers for grain purchased from them, the commissioner shall issue a license to the applicant or shall renew the applicant's license. Licenses shall be issued or renewed annually for a period ending ninety (90) days after the last day of the applicant's fiscal year. The license or renewal thereof issued by the department under this section shall be posted in the principal office of the licensee in this state. A certificate shall be posted in each location listed on a licensee's application where he engages in the business of buying grain. In the case of a licensee operating a truck or tractor trailer unit the licensee is required to have a certificate that the license is in effect and that a bond or certificate of deposit has been filed and is carried in each truck or tractor trailer unit used in connection with the purchase of grain from producers. Upon request of a licensee and payment of the fee thereof, the commissioner shall issue to the licensee a certificate that a license has been issued or renewed and a bond filed as required by this article.

SOURCES: Laws, 1978, ch. 423, § 4, eff from and after July 1, 1978.

§ 75-45-309. Examinations; inspections; suspension or revocation of license; hearings.

(1) Every licensed grain dealer shall be examined by the commissioner each year. The cost of such examination shall be included in the annual license fee. The commissioner, at his discretion, may make additional examinations at any time. If any discrepancy is found as a result of additional examination, the cost of such examination is to be paid by the grain dealer.

(2) The commissioner may inspect the premises used by any grain dealer in the conduct of his business at any time and the books, accounts, records and papers of every such grain dealer shall at all times during business hours be subject to inspection by the commission. Each grain dealer may also be required to make such reports of his activities, obligations and transactions as deemed necessary by the commissioner to protect the producer as set forth in the rules and regulations.

(3) If a grain dealer violates any of the provisions of this article, his license and certificate of license may be removed from his premises by any department employee charged with the enforcement of this article and returned to the department. Such removal shall constitute a suspension of the license.

(4) The commissioner may upon his own motion, and shall upon the verified complaint in writing of any person setting forth facts which if proved would constitute grounds for refusal, suspension or revocation of a license under this article, investigate the actions of any applicant or any person or persons applying for, holding or claiming to hold a license.

(5) The commissioner within ten (10) days after removing and suspending a license as provided in this section or before refusing to issue or renew or before otherwise suspending or revoking a license shall set a date for a hearing thereon and at least ten (10) days prior to the date set for the hearing, shall

notify in writing the applicant for or holder of a license, thereinafter called the respondent, that a hearing will be held on the date designated to determine whether the respondent is privileged to hold such license and shall afford the respondent opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by personal service on the respondent or by mailing the same by registered or certified mail to the place of business last theretofore specified by the respondent in the last application or notification to the department.

(6) At the time and place fixed in the notice, the commissioner shall proceed to hear the matter and any charges made and both the respondent and any complainant shall be accorded opportunity to present in person or by counsel such statements, testimony, evidence and argument as may be pertinent to the matter or charges or to any defenses thereto. The commissioner may continue such hearing from time to time.

SOURCES: Laws, 1978, ch. 423, § 5, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 75-45-311. Failure to make payment to producer.

If a grain dealer should fail or refuse to make payment to a producer for grain purchased when such payment is requested by the producer and the request is made within one hundred sixty (160) days of the date of sale or the date of delivery of such grain to the dealer, whichever is later, but in case of deferred pricing, delayed pricing, priced-later, or similar contractual arrangements, no more than two hundred seventy (270) days after the date of delivery, the producer may notify the commissioner in writing, by certified mail when possible, of such failure or refusal within the period of one hundred sixty (160) days or ten (10) days thereafter. The commissioner upon receiving such notice shall take whatever action is necessary. The producer furnishing such written notice within the prescribed length of time is entitled to the benefits of the grain dealer's bond. However, if a producer fails to furnish written notice to the commissioner within the prescribed time, then such producer is not entitled to any benefits under the grain dealer's bond. Grain dealer liability under priced-later contracts, open-priced contracts, deferred price contracts, or similar agreements shall accrue under the bond in effect at the date of default as determined by the commissioner.

SOURCES: Laws, 1978, ch. 423, § 6, eff from and after July 1, 1978.

§ 75-45-313. Commissioner's powers and duties; rules and regulations.

The commissioner shall carry out and enforce the provisions of this article and is hereby empowered to promulgate rules and regulations to carry out necessary inspections and to appoint and fix the duties of his personnel and provide such equipment as may be necessary to assist him in enforcing the provisions thereof.

SOURCES: Laws, 1978, ch. 423, § 7, eff from and after July 1, 1978.

Cross References — Duties of commissioner, generally, see § 69-1-13.

§ 75-45-315. Prohibited acts; penalties; injunctions.

(1) Any person who engages in business as a grain dealer without securing a license or who does not have a valid license or is in violation of this article or the rules and regulations promulgated thereunder, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent the commissioner or his duly authorized agent in performance of his duty in connection with this article or its rules and regulations, or any grain dealer who refuses to permit inspection of his premises, books, accounts or records as provided in this article shall, upon conviction thereof, be guilty of a misdemeanor and be punished by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) for the first violation, and not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000.00) for each subsequent violation or imprisoned in a penal institution other than the state penitentiary for not more than six (6) months, or both. In case of a continuing violation or violations, each day and each violation occurring constitutes a separate and distinct offense.

(2) It shall be the duty of the Attorney General to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for prosecution he may give the grain dealer an opportunity to present his views at an informal hearing.

(3) The commissioner may apply for and the circuit court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rules and regulations promulgated under the article notwithstanding the existence of other remedies at law. Any such injunction is to be issued without notice and without bond.

(4) The commissioner may apply for, and the appropriate chancery court may grant, a temporary or permanent injunction restraining a grain dealer from disposing of any grain owned, in whole or in part, or held, or in his possession, whether owned in whole or in part, or from anyone removing any grain in which the grain dealer or producers from which he has purchased grain have an interest, in violation of any of the provisions of this article. Such injunction is to be issued without notice and without bond.

SOURCES: Laws, 1978, ch. 423, § 8, eff from and after July 1, 1978.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 47

Commercial Fertilizers

Sec.	
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75-47-35.	Seizure; condemnation; sale.
75-47-37.	Violations.
75-47-39.	Exchanges between manufacturers.

§ 75-47-1. Title of chapter.

This chapter shall be known as the "Mississippi Fertilizer Law of 1970."

SOURCES: Codes, 1942, § 4450-01; Laws, 1970, ch. 263, § 1, eff from and after the first day of July, 1970.

Cross References — Regulation of out-of-state fertilizers, see § 69-1-25.

Aerial application of fertilizers, see §§ 69-21-101 et seq.

Regulation of economic poisons, see §§ 69-23-1 et seq.

JUDICIAL DECISIONS

1. In general.

A former law is repealed by a later enactment which covers its entire scheme although the provisions are somewhat different; and a statute not repugnant to former one, but clearly intended to prescribe the only rule in the case provided for, repealed former statute, and a statute comprising the complete scheme to control sale of fertilizer repealed a prior statute regulating the same subject. Swift & Co. v. Sones, 142 Miss. 660, 107 So. 881 (1926).

Where two acts are passed by the legislature on the same day with reference to the same subject matter one does not necessarily repeal the other, but they should be harmonized if possible. Swift & Co. v. Sones, 142 Miss. 660, 107 So. 881 (1926).

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 52.

CJS. 3 C.J.S., Agriculture §§ 93-101.

§ 75-47-3. Enforcing officials.

This chapter shall be administered jointly by the commissioner of agriculture and commerce of the State of Mississippi, hereinafter referred to as the commissioner, and the state chemist of Mississippi, as specified in the following sections.

SOURCES: Codes, 1942, § 4450-02; Laws, 1970, ch. 263, § 2, eff from and after the first day of July, 1970.

Cross References — General duties of the commissioner of agriculture and commerce, see §§ 69-1-13.

§ 75-47-5. Definitions of words and terms.

(a) The term "commercial fertilizer" means any substance containing one or more recognized plant nutrient(s) which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes and gypsum, and other products exempted by regulation of the commissioner and state chemist.

(1) A "fertilizer material" is a commercial fertilizer which either:

A. Contains important quantities of no more than one (1) of the primary plant nutrients (nitrogen, phosphoric acid and potash), or

B. Has approximately eighty-five (85%) of its plant nutrient content present in the form of a single chemical compound, or

C. Is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(2) A "mixed fertilizer" is a commercial fertilizer containing any combination or mixture of fertilizer materials in which is included at least two (2) primary plant food elements.

(3) A "specialty fertilizer" is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries.

(4) A "bulk fertilizer" is a commercial fertilizer distributed in a nonpackaged form.

(b) The term "brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

(c) Guaranteed Analysis:

(1) Until the commissioner and state chemist prescribe the alternative form of "guaranteed analysis" in accordance with the provisions of subpara-

graph (2) hereof, the term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

A. Total Nitrogen (N) ....______ percent
Available Phosphoric Acid (P_2O_5) ....______ percent
Soluble Potash (K_2O) ....______ percent

B. For unacidulated mineral phosphatic materials, total phosphoric acid and degree of fineness must also be guaranteed, for basic slag degree of fineness must also be, and total phosphoric acid may be guaranteed. For bone, tankage and other organic phosphate materials, the total phosphoric acid and/or degree of fineness may also be guaranteed.

C. Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation of the commissioner and state chemist. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the commissioner and state chemist and with the advice of the director of the agricultural and forestry experimental station. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by the state chemist.

D. Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of fifty pounds per ton, when required by regulation.

(2) When the commissioner and state chemist find, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, they may require by regulation thereafter that the "guaranteed analysis" shall be in the following form:

Total Nitrogen (N) ....______ percent
Available Phosphorus (P) ....______ percent
Soluble potassium (K) ....______ percent

Provided, however, that the effective date of said regulation shall be not less than six (6) months following the issuance thereof, and provided, further, that for a period two (2) years following the effective date of said regulation the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash; provided, however, that after the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium shall constitute the grade.

(d) The term "grade" means the percentage of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis. Provided, however, that fertilizer materials, bone meal, manures, and similar raw materials may be guaranteed in fractional units.

(e) The term "official sample" means any sample of commercial fertilizer taken by the commissioner or his agent and designated as "official" by the state chemist.

(f) The term "ton" means a net weight of two thousand (2,000) pounds avoirdupois.

(g) The term "percent" or "percentage" means the percentage by weight.

(h) The term "person" includes individual, partnership, association, firm and corporation.

(i) The term "distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends commercial fertilizer, or who offers for sale, sells, barters or otherwise supplies commercial fertilizer in this state.

(j) The term "registrant" or "guarantor" means the person who manufactures, blends, sells or offers fertilizer for sale under his name or brand, and who is registered with the Department of Agriculture and Commerce under the provisions of this chapter or rule or regulation adopted pursuant to this chapter.

(k) The term "label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a commercial fertilizer.

(*l*) The term "labeling" means all written, printed or graphic matter, upon or accompanying any commercial fertilizer, or advertisements, brochures, posters, television and radio announcements used in promoting the sale of such commercial fertilizers.

(m) The term "unit" means one percent (1%) of the nutrient referred to in a ton of fertilizer.

SOURCES: Codes, 1942, § 4450-03; Laws, 1970, ch. 263, § 3; Laws, 1997, ch. 448, § 1, eff from and after July 1, 1997.

Cross References — Definition of the term "fertilizer," see § 1-3-13.

Notification of Department of Agriculture and Commerce by Commission on Environmental Quality when chemical, as defined in this section, located in underground water, exceeds or is likely to exceed state standards and chemical's source is not within Commission's jurisdiction, see § 49-17-26.

Plant food deficiency, see § 75-47-17.

Commercial values of certain ingredients, § 75-47-19.

§ 75-47-7. Registration.

(1) Each brand and grade of commercial fertilizer shall be registered before being distributed in this state. The application for registration shall be submitted to the commissioner on forms furnished by the commissioner, and shall be accompanied by a fee of Ten Dollars ($10.00) per brand and grade, except that those fertilizers sold in packages of ten (10) pounds or less shall be

registered at a fee of Fifty Dollars ($50.00) each. One-half (½) of the fees collected for the registration of fertilizer products or Five Dollars ($5.00) per brand and grade and Twenty-five Dollars ($25.00) for those fertilizers sold in packages of ten (10) pounds or less shall be deposited in a special fund in the State Treasury described under Section 69-23-7(2), and such funds shall be subject to appropriation by the Mississippi Legislature. Such fees shall be used by the Mississippi Department of Agriculture and Commerce and the Department of Environmental Quality to carry out a program of protecting the underground water resources from commercial fertilizers or fertilizer materials. Upon approval by the commissioner and State Chemist a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 of the following year. The application shall include the following information:

(a) The net weight.
(b) The brand and grade.
(c) The guaranteed analysis.
(d) The name and address of the registrant.

(2) A distributor shall not be required to register any commercial fertilizer which is already registered under this chapter by another person, providing the label does not differ in any respect.

(3) A distributor shall not be required to register each grade of commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing, but shall be required to register his firm in a manner and at a fee as prescribed in the regulations by the commissioner and State Chemist, and to label such fertilizer as provided in Section 75-47-9(2). All fees collected by the commissioner shall be paid into the State Treasury.

(4) After a public hearing open to all interested parties, the commissioner, State Chemist, and Director of Mississippi Agricultural and Forestry Experimental Station shall have authority to establish minimum amounts of plant nutrients which may be guaranteed and to promulgate ratios and minimum analysis grades of mixed fertilizers adequate to meet the agricultural needs of the state. Such a list shall be published and furnished to fertilizer manufacturers and guarantors on or before June 1 of each year.

(5) Pursuant to a notice from the Department of Environmental Quality under Section 49-17-26 in relation to state underground water quality standards, the Commissioner of Agriculture shall provide for modification of the labeling of any fertilizer, or suspend or cancel the registration of any fertilizer or any use of any fertilizer, or adopt a regulation in accordance with Section 69-23-9 to protect the underground water resources, as defined in the Federal Safe Drinking Water Act, in the shortest reasonable time.

SOURCES: Codes, 1942, § 4450-04; Laws, 1970, ch. 263, § 4; Laws, 1987, ch. 523, § 5; Laws, 1991, ch. 530, § 25, eff from and after July 1, 1991.

Editor's Note — Laws of 1987, ch. 523, § 7, effective from and after July 1, 1987, provides as follows:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for fees or charges due or accrued under the Mississippi Economic Poison Law of 1950 or the Mississippi Fertilizer Law of 1970 prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such laws are expressly continued in full force, effect and operation for the purpose of the assessment and collection fees due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Federal Aspects — The Federal Safe Drinking Water Act is codified at 42 USCS § 300f et seq.

JUDICIAL DECISIONS

1. In general.

Failure of seller of commercial fertilizers to comply with the requirements of 1942 Code §§ 4450-4474, particularly the requirement for registration as dealer, the purchase of stamps, the payment of inspection fees, and the giving of notice to the commissioner of agriculture of shipments did not constitute a defense to an action for damages for breach of contract for purchase of fertilizer, since contract covered the purchase of a lawful commodity and was not malum in se but merely malum prohibitum. Gardner v. Reed, 207 Miss. 306, 42 So. 2d 206 (1949).

The commissioner of agriculture was without authority to refuse registration of trade mark, brand and tag of fertilizer merely for the reason of applicant's past violations of law. Garner v. Delta Cotton Oil Co., 142 Miss. 844, 108 So. 149 (1926).

§ 75-47-9. Labels.

(1) Any commercial fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the information required by Section 75-47-7(1)(a), (b), (c), and (d) of this chapter. In case of bulk shipments, this information in written or printed form shall accompany delivery and be supplied to the purchaser at time of delivery.

(2) A commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis, and the name and address of the distributor.

SOURCES: Codes, 1942, § 4450-05; Laws, 1970, ch. 263, § 5, eff from and after the first day of July, 1970.

Cross References — Requirement that commercial fertilizer distributor label fertilizer as provided in this section, see § 75-47-7.

Misbranding, see § 75-47-21.

§ 75-47-11. Inspection fees.

(1) There shall be paid to the commissioner for all commercial fertilizers distributed in this state an inspection fee at the rate of Twenty-five Cents (25¢) per ton, provided that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall be used for the payment of the costs,

by act of the Legislature, of inspection, sampling and analysis, and other expenses necessary for the administration of this chapter. On individual packages of commercial fertilizer containing ten (10) pounds or less, there shall be paid in lieu of the annual registration fee of Ten Dollars ($10.00) per brand and grade and the Twenty-five Cent (25¢) per ton inspection fee, an annual registration fee and inspection fee of Fifty Dollars ($50.00) for each brand and grade sold or distributed. Where a person sells commercial fertilizer in packages of ten (10) pounds or less and in packages over ten (10) pounds, this annual registration and inspection fee of Fifty Dollars ($50.00) shall apply only to that portion sold in packages of ten (10) pounds or less, and that portion sold in packages over ten (10) pounds shall be subject to the same inspection fee of Twenty-five Cents (25¢) per ton as provided in this chapter.

(2) Every registrant or guarantor who distributes a commercial fertilizer in this state shall file with the commissioner, on forms furnished by the commissioner, a quarterly statement for the periods ending September 30, December 31, March 31 and June 30, setting forth the number of net tons of each commercial fertilizer distributed in this state during such quarter. The report shall be due on or before the thirtieth day of the month following the close of each quarter. Upon such statement the registrant shall pay the inspection fee at the rate stated in paragraph (1) of this section.

If the tonnage report is not filed and the payment of inspection fee is not made within thirty (30) days after the end of the quarter, a collection fee amounting to ten percent (10%) of the amount, but in no case less than Ten Dollars ($10.00), shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

(3) When more than one person is involved in the distribution of a commercial fertilizer, the last person who has the fertilizer registered and who distributes to a nonregistrant, dealer or consumer, is responsible for reporting the tonnage and paying the inspection fee.

SOURCES: Codes, 1942, § 4450-06; Laws, 1970, ch. 263, § 6; Laws, 1973, ch. 411, § 1; Laws, 1987, ch. 523, § 6; Laws, 1997, ch. 448, § 2, eff from and after July 1, 1997.

Editor's Note — Laws of 1987, ch. 523, § 7, effective from and after July 1, 1987, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for fees or charges due or accrued under the Mississippi Economic Poison Law of 1950 or the Mississippi Fertilizer Law of 1970 prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such laws are expressly continued in full force, effect and operation for the purpose of the assessment and collection fees due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

JUDICIAL DECISIONS

1. In general.

Failure of seller of commercial fertilizers to comply with the requirements of 1942 Code §§ 4450-4474, particularly the requirement for registration as dealer, the purchase of stamps, the payment of inspection fees, and the giving of notice to the commissioner of agriculture of shipments did not constitute a defense to an action for damages for breach of contract for purchase of fertilizer, since contract covered the purchase of a lawful commodity and was not malum in se but merely malum prohibitum. Gardner v. Reed, 207 Miss. 306, 42 So. 2d 206 (1949).

§ 75-47-13. Tonnage reports.

All fertilizer registrants transacting, distributing or selling commercial fertilizer to a nonregistrant shall file with the commissioner a summary quarterly report showing the county code of the consignee, each grade of commercial fertilizer, the amounts in tons, the Uniform Fertilizer Tonnage Reporting System (UFTRS) code, the form in which the fertilizer was distributed (bag, bulk or liquid) and the use (farm or non-farm). This report of tonnage sold shall be reported by one (1) of the following methods:

(a) Submitting a summary report on forms furnished by the commissioner; or

(b) Submitting an electronic disk format or text file acceptable to the UFTRS. Each reporting method shall be due on the specified dates set forth in Section 75-47-11(2). No information furnished to the commissioner under this section shall be disclosed in such a way as to divulge the methods of operation of any registrant.

SOURCES: Codes, 1942, § 4450-07; Laws, 1970, ch. 263, § 7; Laws, 1997, ch. 448, § 3, eff from and after July 1, 1997.

JUDICIAL DECISIONS

1. In general.

Failure of seller of commercial fertilizers to comply with the requirements of 1942 Code §§ 4450-4474, particularly the requirement for registration as dealer, the purchase of stamps, the payment of inspection fees, and the giving of notice to the commissioner of agriculture of shipments did not constitute a defense to an action for damages for breach of contract for purchase of fertilizer, since contract covered the purchase of a lawful commodity and was not malum in se but merely malum prohibitum. Gardner v. Reed, 207 Miss. 306, 42 So. 2d 206 (1949).

§ 75-47-15. Inspection; sampling; analysis.

(1) It shall be the duty of the commissioner, who may act through his authorized agent, to sample and inspect, and of the state chemist to make analyses of and test commercial fertilizers distributed within this state at any time and place and to such an extent as they may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this chapter. The commissioner, individually or through his agent, is authorized to enter upon any public or private premises or carriers during regular

business hours in order to have access to commercial fertilizers subject to the provisions of this chapter and the rules and regulations pertaining thereto, and to the records relating to their distribution.

(2) In drawing any official sample and in making any analysis, the officially adopted methods and terminology of the Association of Official Analytical Chemists shall be used. In cases not covered by such officially adopted methods and terminology, the state chemist shall, as soon as practicable and from other sources deemed proper, adopt and publish appropriate methods and terminology.

(3) The state chemist and commissioner, in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in paragraph (e) of Section 75-47-5, and obtained and analyzed as provided for in subsection (2) of this section.

(4) The results of official analysis of commercial fertilizers and portions of official samples shall be distributed by the state chemist as provided in the regulations.

SOURCES: Codes, 1942, § 4450-08; Laws, 1970, ch. 263, § 8, eff from and after the first day of July, 1970.

Cross References — State inspection of fertilizers furnished under federal grants-in-aid, see § 69-1-29.

JUDICIAL DECISIONS

1. In general.

Where samples of fertilizers are not drawn and forwarded as required by statute, certificate of state chemist is not admissible in evidence. Swift & Co. v. Sones, 142 Miss. 660, 107 So. 881 (1926).

§ 75-47-17. Plant food deficiency.

(1) **Penalty for Nitrogen, Available Phosphoric Acid or Phosphorus and Potash or Potassium** — If the analysis shall show that commercial fertilizer is deficient in one or more of its guaranteed primary plant foods (NPK) beyond the "investigational allowances" as established by regulation, or if the overall index value of the fertilizer is below the level established by regulation, a penalty of three times the commercial value of such deficiency(ies) shall be assessed on each ton of fertilizer in the lot or shipment represented by the sample analyzed.

(2) **Penalties for Other Deficiencies** — Deficiencies beyond the investigational allowances as established by regulation in any other constituent(s) covered under Section 75-47-5 paragraph (c)(1)B, C, and D, which the registrant is required to or may guarantee, shall be evaluated and penalties prescribed therefor by the commissioner and state chemist.

(3) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction praying for judgment as to the justification of such penalties.

(4) All penalties assessed under this section shall be paid to the commissioner, who shall deposit the same in the state treasury.

SOURCES: Codes, 1942, § 4450-09; Laws, 1970, ch. 263, § 9, eff from and after the first day of July, 1970.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in subsection (2) by substituting "Section 75-47-5 paragraph (c)(1) B, C, and D" for "Section 75-47-5 paragraph (c) B, C, and D." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Commercial values of ingredients, see § 75-47-19.

§ 75-47-19. Commercial value.

For the purpose of determining the commercial values to be applied under the provisions of Section 75-47-17, the state chemist shall determine and publish annually the values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizers in this state. If guarantees are as provided in Section 75-47-5(c)(2), the value shall be per unit of nitrogen, phosphorus, and potassium. The values so determined and published shall be used in determining and assessing penalties.

SOURCES: Codes, 1942, § 4450-10; Laws, 1970, ch. 263, § 10, eff from and after the first day of July, 1970.

§ 75-47-21. Misbranding.

No person shall distribute misbranded fertilizer. A commercial fertilizer shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is distributed under the name of another fertilizer product.

(c) If it is not labeled as required in Section 75-47-9 and in accordance with regulations prescribed under this chapter.

(d) If it purports to be or is represented as a commercial fertilizer, or is represented as containing a plant nutrient or commercial fertilizer unless such plant nutrient or commercial fertilizer conforms to the definition of identity, if any, prescribed by regulation of the commissioner and state chemist. In the adopting of such regulations, the commissioner and state chemist shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the Association of American Fertilizer Control Officials.

SOURCES: Codes, 1942, § 4450-11; Laws, 1970, ch. 263, § 11, eff from and after the first day of July, 1970.

§ 75-47-23. Adulteration.

No person shall distribute an adulterated fertilizer product. A commercial fertilizer shall be deemed to be adulterated:

(a) If it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use, which may be necessary to protect plant life are not shown upon the label.

(b) If its composition falls below or differs from that which it is purported to possess by its labeling.

(c) If it contains unwanted crop seed or weed seed.

SOURCES: Codes, 1942, § 4450-12; Laws, 1970, ch. 263, § 12, eff from and after the first day of July, 1970.

Cross References — Criminal offense for adulteration of cottonseed meal, see § 97-23-15.

JUDICIAL DECISIONS

1. In general.

Under a former statute giving a right of action for the sale of adulterated fertilizers, the term "fertilizer" being defined as including substances, chemicals and compounds, whether natural or artificial products, castor pomace, cottonseed meal, etc., but not including cottonseed, unmixed cottonseed products, such as a product composed of equal parts of the pulverized kernels and of pulverized hulls of the cottonseed, were not fertilizers. Gilmore Puckett Grocery Co. v. J. Lindsey Wells Co., 103 Miss. 468, 60 So. 580 (1912).

§ 75-47-25. Publications.

The commissioner shall publish at least annually and in such forms as he may deem proper: (a) Information concerning the distribution of commercial fertilizers, (b) Results of analyses based on official samples of commercial fertilizers distributed within the state as compared with the analyses guaranteed under Section 75-47-7 and Section 75-47-9.

SOURCES: Codes, 1942, § 4450-13; Laws, 1970, ch. 263, § 13, eff from and after the first day of July, 1970.

§ 75-47-27. Rules and regulations.

The commissioner and state chemist are authorized to prescribe and, after a public hearing following due public notice, to enforce such rules and regulations relating to investigational allowances, definitions, records, and the distribution of commercial fertilizers, and any other matters not inconsistent with the meaning and intent of this chapter, as may be necessary to carry into effect the full intent and meaning of this chapter.

SOURCES: Codes, 1942, § 4450-14; Laws, 1970, ch. 263, § 14, eff from and after the first day of July, 1970.

§ 75-47-29. Check weighing.

Sections 75-27-1 through 75-27-67 shall be applicable with respect to the regulation and checking of the measure and weight of commercial fertilizers.

SOURCES: Codes, 1942, § 4450-15; Laws, 1970, ch. 263, § 15, eff from and after the first day of July, 1970.

§ 75-47-31. Cancellation of registrations.

The commissioner and state chemist are authorized and empowered to cancel the registration of any brand of commercial fertilizer or to refuse to register any brand of commercial fertilizer as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this chapter or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the commissioner and state chemist.

SOURCES: Codes, 1942, § 4450-16; Laws, 1970, ch. 263, § 16, eff from and after the first day of July, 1970.

§ 75-47-33. "Stop sale" orders.

The commissioner may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the commissioner finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this chapter until the law has been complied with and said commercial fertilizer is released in writing by the commissioner, or said violation has been otherwise legally disposed of by written authority. The commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

SOURCES: Codes, 1942, § 4450-17; Laws, 1970, ch. 263, § 17, eff from and after the first day of July, 1970.

§ 75-47-35. Seizure; condemnation; sale.

Any lot of commercial fertilizer not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this chapter and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state: Provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this chapter.

SOURCES: Codes, 1942, § 4450-18; Laws, 1970, ch. 263, § 18, eff from and after the first day of July, 1970.

§ 75-47-37. Violations.

(1) If it shall appear from the examination of any commercial fertilizer that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the commissioner shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the commissioner. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the commissioner may certify the facts to the proper prosecuting attorney.

(2) Any person convicted of violating any provision of this chapter or the rules and regulations issued thereunder shall be guilty of a misdemeanor and punished accordingly.

(3) Nothing in this chapter shall be construed as requiring the commissioner or his representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when he believes that the public interests will be best served by a suitable notice of warning in writing.

(4) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(5) The commissioner is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction shall be issued without bond.

SOURCES: Codes, 1942, § 4450-19; Laws, 1970, ch. 263, § 19, eff from and after the first day of July, 1970.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Failure of seller of commercial fertilizers to comply with the requirements of 1942 Code §§ 4450-4474, particularly the requirement for registration as dealer, the purchase of stamps, the payment of inspection fees, and the giving of notice to the commissioner of agriculture of shipments did not constitute a defense to an action for damages for breach of contract for purchase of fertilizer, since contract covered the purchase of a lawful commodity and was not malum in se but merely malum prohibitum. Gardner v. Reed, 207 Miss. 306, 42 So. 2d 206 (1949).

§ 75-47-39. Exchanges between manufacturers.

Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer to manufacturers or manipulators who have registered their brands as required by the provisions of this chapter.

SOURCES: Codes, 1942, § 4450-20; Laws, 1970, ch. 263, § 20, eff from and after the first day of July, 1970.

CHAPTER 49

Factory-Built Homes

Sec.	
75-49-1.	Short title.
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75-49-17.	Enforcement.
75-49-19.	Violations; penalties; exceptions.
75-49-21.	Permit fees for manufactured or mobile homes.

§ 75-49-1. Short title.

This chapter shall be known and may be cited as "The Uniform Standards Code for Factory-Built Homes Law."

SOURCES: Codes, 1942, § 5131-101; Laws, 1970, ch. 494, § 1, eff from and after July 1, 1970; Laws, 1992, ch. 494, § 1, eff from and after July 1, 1992.

Cross References — Ad valorem taxes on mobile homes, see § 27-53-1 et seq.

Sanitary code for house trailers, house trailer camps, and tourist camps, see § 41-25-13.

Authority of State Chief Deputy Fire Marshal and deputy state fire marshals to make arrests and execute all warrants for violations of this chapter and Chapter 11, Title 45, see § 45-11-1.

Maximum finance charges which may be contracted for in connection with sales of factory manufactured moveable homes, see § 75-17-23.

RESEARCH REFERENCES

ALR. Validity and application of zoning regulations relating to mobile home or trailer parks. 42 A.L.R.3d 598.

Liability for injury or death allegedly caused by defect in mobile home or trailer. 81 A.L.R.3d 421.

Am Jur. 53A Am. Jur. 2d, Mobile Homes and Trailer Parks § 1 et seq.

§ 75-49-3. Definitions.

Unless clearly indicated otherwise by the context, the following words when used in this chapter, for the purpose of this chapter, shall have the meanings respectively ascribed to them in this section:

(a) "Manufactured home" means a structure defined by, and constructed in accordance with, the National Manufactured Housing Construction and

Safety Standards Act of 1974, as amended (42 USCS 5401 et seq.), and manufactured after June 14, 1976.

(b) "Mobile home" means a structure manufactured before June 15, 1976, that is not constructed in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 USCS 5401 et seq.). It is a structure that is transportable in one or more sections, that, in the traveling mode, is eight (8) body feet or more in width and thirty-two (32) body feet or more in length, or, when erected on site, is two hundred fifty-six (256) or more square feet, and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes any plumbing, heating, air conditioning and electrical systems contained therein; except that such term shall include any structure which meets all the requirements and with respect to which the manufacturer voluntarily files a certification required by the commissioner and complies with the standards established under this chapter.

(c) "Modular home" means a structure which is: (i) transportable in one or more sections; (ii) designed to be used as a dwelling when connected to the required utilities, and includes plumbing, heating, air conditioning and electrical systems with the home; (iii) certified by its manufacturers as being constructed in accordance with a nationally recognized building code; and (iv) designed to be permanently installed at its final destination on an approved foundation constructed in compliance with a nationally recognized building code. The term "modular home" does not include manufactured housing as defined by the National Manufactured Housing Construction and Safety Standards Act of 1974.

(d) "Modular home contractor" means a licensed residential building contractor or a licensed retailer who buys factory-built modular homes for resale to the general public, whether to be located on the consumer's home site or a land-home package on property owned by the modular home contractor. A Mississippi licensed modular home contractor is authorized to sell new modular homes for installation on a consumer's home site or as part of a land-home package without the necessity of maintaining a separate sales center. A modular home contractor shall be responsible for the installation requirements for modular housing as provided in Section IV of the rules and regulations for Uniform Standards Code for the Factory-built Homes as related to modular homes.

(e) "Factory-built home" means a mobile home, a manufactured home, and a modular home as those terms are defined herein.

(f) "Commissioner" means the Commissioner of Insurance of the State of Mississippi.

(g) "Chief Deputy State Fire Marshal" means the individual appointed by the Commissioner of Insurance, who, along with his employees, is designated by the commissioner to implement and enforce this chapter and to maintain, among other duties, the Factory Built Division of the Insurance Department.

(h) "Division" means the Factory Built Division of the State Fire Marshal's Office.

(i) "Person" means any individual, firm, corporation, partnership, association or other type of business entity.

(j) "Retailer" means any person engaged in the retail sale of new or used manufactured mobile or modular homes to the general public.

(k) "Developer" means any person who buys factory-built homes and real estate and then offers to sell or lease to the general public land-home "package deals" consisting of a home with real estate. Upon renewal of a license, a developer must provide documentation to the Department of Insurance that he or she has at least five (5) available manufactured or modular home sites. A developer shall be responsible for installation requirements for manufactured or modular housing as set forth in Section IV of the rules and regulations for the Uniform Standards Code for Factory-Built Homes Law.

(*l*) "Independent contractor installer or transporter" means any person who is engaged for hire in the movement or transportation, or both, or the installation, blocking, anchoring and tie-down of a factory-built home. An "independent contractor installer or transporter" shall not include persons who do not hold themselves out for hire to the general public for the purposes described in this definition.

(m) "Manufacturer" means any person engaged in the production (construction) of manufactured homes or modular homes.

(n) "Installation" means the assembly of a manufactured building, components of manufactured building on site and the process of affixing a manufactured building to land, a foundation, footings or an existing building and service connections which are a part thereof.

SOURCES: Codes, 1942, § 5131-102; Laws, 1970, ch. 494, § 2; Laws, 1983, ch. 410; Laws, 1988, ch. 526, § 11; Laws, 2005, ch. 326, § 1; Laws, 2007, ch. 371, § 1; Laws, 2008, ch. 407, § 1, eff from and after July 1, 2008.

Editor's Note — Laws of 1988, ch. 526, § 13 provides as follows:

"Section 13. The commissioner may, after notice and hearing, issue rules and regulations that he deems necessary to effectuate the purposes of this act or to eliminate devices or plans designed to avoid or render ineffective the provisions of this act. The commissioner may require such information as is reasonably necessary for the enforcement of this act. All rules and regulations adopted and promulgated pursuant to this act shall be subject to the provisions of the Mississippi Administrative Procedures Law as provided in Section 25-43-1 et seq., Mississippi Code of 1972."

Cross References — Zoning ordinances relating to factory manufactured movable homes, as defined herein, authorized, see § 17-1-39.

Auctions of factory-built homes as defined in this section, see § 73-4-29.

Commissioner of Insurance generally, see § 83-1-3.

Federal Aspects — National Manufactured Housing Construction and Safety Standards Act of 1974, see 42 USCS § 5401 et seq.

JUDICIAL DECISIONS

1. Special exception to a zoning ordinance.

Where the home in question was properly considered a manufactured home rather than a mobile home, no special exception to Hancock County, Miss., Zoning Ordinance § 905 was needed. Perez v. Garden Isle Cmty. Ass'n, — So. 2d —, 2003 Miss. LEXIS 604 (Miss. Nov. 6, 2003), opinion withdrawn by, substituted opinion at 882 So. 2d 217, 2004 Miss. LEXIS 1172 (Miss. 2004).

§ 75-49-5. Statement of policy; rule-making power.

(1) Factory-built homes, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems), like other finished products having concealed vital parts, may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In the sale of factory-built homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this state to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new factory-built homes which are not properly constructed and anchored and blocked at the homesite so as to provide reasonable safety and protection to their owners and users. It is also the policy of this state that used factory-built homes be properly anchored and blocked at the homesite.

(2) The commissioner is hereby authorized and directed to investigate and examine into engineering and construction practices and techniques, the properties of construction materials used in the construction and assembly of factory-built homes, their electrical, plumbing, heating and other systems and appliances, their anchoring and blocking systems and techniques, fire prevention and protective techniques and measures to promote safety of persons and property and protect the health of users of such factory-built homes. The commissioner, in the interest of such public safety, is authorized to employ a minimum of three (3) additional employees in the Manufactured Housing Division of the Insurance Department to serve as Fire Marshal I, Deputies in the enforcement of the provisions of this chapter.

(3) All manufactured homes shall meet the requirements set forth in the Federal Manufactured Home Construction and Safety Standards (24 CFR Section 3280), established by the Secretary of the United States Department of Housing and Urban Development in accordance with the National Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C.S. 5401 et seq.), or such amendments to the standards as are adopted by the Secretary of the United States Department of Housing and Urban Development after July 1, 1992.

(4) The commissioner is also authorized and empowered to issue, promulgate and enforce all rules and procedures which in his judgment are necessary and desirable to make effective the construction standards so established. The commissioner is also empowered to promulgate and enforce rules and regulations for the safe anchoring and blocking of factory-built homes when they are

delivered to the site where they are intended to be used for human habitation. When promulgating and enforcing such rules and regulations the commissioner shall take into consideration the rapidly changing technical advances continually being made by the industry.

SOURCES: Codes, 1942, § 5131-103; Laws, 1970, ch. 494, § 3; Laws, 1979, ch. 312, § 1; Laws, 1992, ch. 494, § 3; Laws, 1993, ch. 370, § 1, eff from and after July 1, 1993.

Cross References — Auctions of factory-built homes anchored and blocked in accordance with regulations promulgated pursuant to this section, see § 73-4-29.

Compliance with commissioner's rules, see § 75-49-7.

License applicant's certification of compliance with rules and regulations, see § 75-49-9.

RESEARCH REFERENCES

ALR. Products liability: prefabricated buildings. 4 A.L.R.5th 667.

Am Jur. 53A Am. Jur. 2d, Mobile Homes and Trailer Parks § 1 et seq.

17 Am. Jur. Pl & Pr Forms (Rev), Mobile Homes, Trailer Parks and Tourist Camps, Form 6 (judgment or decree granting injunction and directing removal of mobile home from subdivision).

17 Am. Jur. Pl & Pr Forms (Rev), Mobile Homes, Trailer Parks and Tourist Camps, Forms 1-5 (pleadings in suit to enjoin location of trailer park or mobile home).

17 Am. Jur. Pl & Pr Forms (Rev), Mobile Homes, Trailer Parks, and Tourist Camps, Forms 28, 28.5 (complaint, petition, or declaration; against manufacturer; to recover for economic loss/personal injury suffered as a result of defects in mobile home).

12B Am. Jur. Legal Forms 2d, Mobile Home and Trailer Parks § 176:10 et seq. (mobile home sales).

17 Am. Jur. Proof of Facts 2d 213, Defective Mobile Home.

Law Reviews. 1979 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 813, December 1979.

§ 75-49-7. Compliance with commissioner's rules.

(1) No person may manufacture, sell or offer for sale, or transport or install any factory-built home which has been constructed after July 1, 1970, unless such manufactured home, its components, systems and appliances were constructed and assembled in accordance with rules of the commissioner issued to afford reasonable protection to persons and property with respect to the construction, assembly and sale of such factory-built homes, and unless compliance with such rules be evidenced in the manner required by the commissioner's rules.

(2) From and after July 1, 1992, no dealer, transporter or installer shall deliver or cause to be delivered any factory-built home to any person at any site where such home is to be used for human habitation without anchoring and blocking such home in accordance with rules, regulations and procedures promulgated by the commissioner pursuant to Section 75-49-5; provided, however, that a period of thirty (30) days from date of delivery shall be allowed for the anchoring and blocking of such homes.

(3) The requirements of this chapter with regard to any transporter of factory-built housing are in addition to the requirements of any other law currently in effect.

SOURCES: Codes, 1942, § 5131-104; Laws, 1970, ch. 494, § 4; Laws, 1979, ch. 312, § 2, eff from and after July 1, 1979; Laws, 1992, ch. 494, § 4, eff from and after July 1, 1992.

RESEARCH REFERENCES

ALR. Products liability: prefabricated buildings. 4 A.L.R.5th 667.

Am Jur. 17 Am. Jur. Pl & Pr Forms (Rev), Mobile Homes, Trailer Parks, and Tourist Camps, Forms 28, 28.5 (complaint, petition, or declaration; against manufacturer; to recover for economic loss/personal injury suffered as a result of defects in mobile home).

12B Am. Jur. Legal Forms 2d, Mobile Home and Trailer Parks § 176.10 et seq. (mobile home sales).

Law Reviews. 1979 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 813, December 1979.

§ 75-49-9. Annual licensing and renewal requirements and procedures; fees; penalties; establishment and implementation of installation program; installation inspection and fee.

(1) After July 1, 1992, every manufacturer, every transporter or installer, developer and every retailer who sells, manufactures, transports or installs new or used factory-built homes within the State of Mississippi shall apply for and obtain a license from the commissioner.

(2) If a factory-built home is new, the applicant shall certify in the application to the commissioner that the applicant will comply with the construction standards set forth under rules and regulations provided in Section 75-49-5 herein, and that the applicant has obtained a current and valid tax identification number.

(3) Applications shall be obtained from and submitted to the commissioner on forms prescribed by the commissioner.

(4) The original license fee and all annual renewals thereof shall be Two Hundred Fifty Dollars ($250.00) for manufacturing plants that build manufactured homes and Two Hundred Fifty Dollars ($250.00) for manufacturing plants that manufacture modular homes located within or without the State of Mississippi manufacturing or delivering homes for sale within the State of Mississippi and One Hundred Fifty Dollars ($150.00) per manufactured home and/or modular home retailer location and developer location and modular home contractor within the State of Mississippi. The licensing fee for a manufactured home and/or modular home independent contractor transporter or installer is One Hundred Dollars ($100.00) for each company. The fee for modular home plan review shall be Four Hundred Dollars ($400.00) per floor plan; however, this fee shall not apply to any modular home plan reviews completed before July 1, 1998. Except as otherwise provided in subsection (10)

of this section, the license shall be valid for a period of one (1) year from the date of issuance, or until revoked as provided herein.

(5) After July 1, 1992, every manufacturer, transporter or installer or seller who first sells, manufactures, transports or installs a new or used factory-built home in this state, before such first construction, sale, transportation or installation shall apply for and obtain a license from the commissioner. The fee shall be paid to the commissioner in such manner as the commissioner may by rule require. All funds received by the commissioner shall be deposited in a special fund account in the State Treasury to the credit of the Department of Insurance.

(6) Every manufacturer of manufactured homes in the state shall pay a monitoring inspection fee to the Secretary of Housing and Urban Development, or the secretary's agent, for each manufactured home produced in the state by the manufacturer. The fee shall be in an amount established by the secretary pursuant to the National Manufactured Home Construction and Safety Standards Act of 1974, 42 USCS 5401 et seq. and as amended by the Manufactured Housing Improvement Act of 2000. The portion of the fee which is returned to the state shall be deposited by the commissioner in a special fund account in the State Treasury to the credit of the Department of Insurance.

(7) The commissioner shall investigate and examine all applicants for all licenses by holding such hearings as he shall deem necessary or conducting investigations or examinations, or any combination thereof, as to the fitness or expertise of the applicant for the type of license for which the applicant applied. A license shall be granted only to a person who bears a good reputation for honesty, trustworthiness, integrity and competency to transact the business in such a manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commissioner.

(8) The commissioner shall take all applicants under consideration after having examined them through oral or written examinations, or both, before granting any license. If the applicant is an individual, examination may be taken by his personal appearance for examination or by the appearance for examination of one or more of his responsible, full-time managing employees; and if a partnership or corporation or any other type of business or organization, by the examination of one or more of the responsible, full-time managing officers or members of the executive staff of the applicant's firm. Every application by an individual for a license to sell, transport or install new or used mobile, manufactured and modular homes shall be verified by the oath or affirmation of the applicant, and every such application by a partnership or corporation shall be verified by the oath or affirmation of a partner or an officer thereof. The applications for licenses shall be in such form and detail as the commissioner shall prescribe.

(9) The holder of any valid license issued by the commissioner on July 1, 1988, shall be automatically issued an equivalent license in the same category for which his previous license was issued if the licensee is in compliance with this chapter.

(10) Beginning July 1, 1988, every license issued under this chapter shall be issued annually and shall expire on June 30 following the date upon which it was issued. License fees shall not be prorated for the remainder of the year in which the application was made but shall be paid for the entire year regardless of the date of the application. The commissioner shall, on or before April 30, 1989, and on or before April 30 of each succeeding year thereafter, forward a "Notice of Renewal," by regular United States mail, to each licensee at his or its last known post office address. After depositing the "Notice of Renewal" in the United States mail, the commissioner shall have no other duty or obligation to notify the licensee of the expiration of his or its annual license. The failure of the licensee to obtain a renewal license on or before June 30 of the ensuing license period shall act as an automatic suspension of the license unless the commissioner, for good cause shown in writing and the payment of an amount equal to double the renewal fee for said delinquency, lifts the suspension and issues the renewal license. During the period of suspension any practice by the licensee under the color of such license shall be deemed a violation of this chapter. Annual renewals of a retailer's license shall require, as a condition precedent, that the retailer verify by oath or affirmation that he maintains a retail sales lot in accordance with all rules and regulations promulgated by the commissioner and that the lot has three (3) or more new or used factory-built homes located thereon for retail sale as a residential dwelling or for any other use at the time of application.

(11) The commissioner may enter into an agreement with the Secretary of Housing and Urban Development to establish or implement an installation program that meets the requirements set by the Secretary of Housing and Urban Development, or the secretary's agent, pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USCS 5401 et seq., and as amended by the Manufactured Housing Improvement Act of 2000, may conduct installation inspections under this program, may charge an installation inspection fee in an amount established by the secretary, and may contract with a third party to assist with the implementation and enforcement of this program.

SOURCES: Codes, 1942, § 5131-105; Laws, 1970, ch. 494, § 5; Laws, 1974, ch. 442, § 2; Laws, 1979, ch. 353, § 1; Laws, 1988, ch. 526, § 12; Laws, 1992, ch. 494, § 5; Laws, 1993, ch. 370, § 2; Laws, 1998, ch. 495, § 1; Laws, 2005, ch. 326, § 2; Laws, 2007, ch. 371, § 2; Laws, 2008, ch. 407, § 2, eff from and after July 1, 2008.

Editor's Note — Laws of 1988, ch. 526, § 13, provides as follows:

"SECTION 13. The commissioner may, after notice and hearing, issue rules and regulations that he deems necessary to effectuate the purposes of this act or to eliminate devices or plans designed to avoid or render ineffective the provisions of this act. The commissioner may require such information as is reasonably necessary for the enforcement of this act. All rules and regulations adopted and promulgated pursuant to this act shall be subject to the provisions of the Mississippi Administrative Procedures Law as provided in Section 25-43-1 et seq., Mississippi Code of 1972."

Cross References — Auctions of factory-built homes restricted to dealers licensed pursuant to this section, see § 73-4-29.

Federal Aspects — The Manufactured Housing Improvement Act of 2000, 106 P.L. 569, 114 Stat. 2944, appears in part as notes to 42 USCS § 5401.

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Mobile Homes and Trailer Parks § 1 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder-against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

CJS. 61A C.J.S., Motor Vehicles §§ 1763-1765, 1890, 1924, 1925.

§ 75-49-11. Administration of chapter.

The commissioner, acting through the Chief Deputy State Fire Marshal and the Factory Built Division of the Insurance Department, is hereby charged with the administration of this chapter. The commissioner may make and amend, alter or repeal, general rules and regulations of procedure for carrying into effect all provisions of this chapter, for obtaining statistical data respecting manufactured, mobile and modular homes, for establishing bonding and insurance requirements for the licensure of manufacturers, modular contractors, developer retailers and transporters or installers of factory-built homes, and to prescribe means, methods and practices to make effective such provisions, and he may make such investigations and inspection as in his judgment are necessary to enforce and administer this chapter.

The commissioner is authorized and empowered to require each manufacturer, modular contractor, developer, retailer and transporter or installer of factory-built homes to establish and maintain such records, make such reports and provide such information as he may reasonably require to determine whether the manufacturer, modular contractor, developer, retailer, transporter or installer has acted or is acting in compliance with this chapter and the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 USCS 5401 et seq.) and as amended by the Manufactured Housing Improvement Act of 2000, and other rules and regulations prescribed according to this chapter. The commissioner, or a person duly designated by the commissioner, is authorized to inspect appropriate books, papers, records and documents of any manufacturer, modular contractor, developer, retailer, transporter or installer of factory-built homes which are relevant to determining if the licensee has acted or is acting in compliance with this chapter and the Federal Manufactured Home Construction and Safety Standards (24 CFR Section 3280) and other rules and regulations prescribed according to this chapter.

SOURCES: Codes, 1942, § 5131-106; Laws, 1970, ch. 494, § 6; Laws, 1979, ch. 353, § 2; Laws, 1992, ch. 494, § 6; Laws, 2005, ch. 326, § 3; Laws, 2008, ch. 443, § 1, eff from and after July 1, 2008.

§ 75-49-13. Hearings and appeals.

(1) The commissioner shall not:

(a) Deny an application for a license without first giving the applicant a hearing, or an opportunity to be heard, on the question of whether he is qualified under the provisions of this chapter to receive the license applied for.

(b) Revoke or suspend a license without first giving the licensee a hearing, or an opportunity to be heard, on the question of whether there are sufficient grounds under the provisions of this chapter upon which to base such revocation or suspension.

(2) Any interested party shall have the right to have the commissioner call a hearing for the purpose of taking action in respect to any matter within the commissioner's jurisdiction by filing with the commissioner a verified complaint setting forth the grounds upon which the complaint is based.

(3) The commissioner may on his own motion call a hearing for the purpose of taking action in respect to any matter within his jurisdiction.

(4) When a hearing is to be held before the commissioner, the commissioner shall give written notice thereof to all parties whose rights may be affected thereby. The notice shall set forth the reason for the hearing and the questions or issues to be decided by the commissioner at such hearing and the time when and the place where the hearing will be held. All such notices shall be mailed to all parties, whose rights may be affected by such hearing by registered or certified mail, and addressed to their last known address.

(5) All parties whose rights may be affected at any hearing before the commissioner shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against them, and to produce evidence and witnesses in their own behalf. The commissioner shall make and keep a record of each such hearing and shall provide a transcript thereof to any interested party upon his request and at his expense. Testimony taken at all such hearings shall be taken either stenographically or by machine.

(6) If any party who is notified of a hearing in accordance with the requirements of this chapter fails to appear at such hearing, either in person or by counsel, then and in that event the commissioner may make any decision and take any action he may deem necessary or appropriate with respect to any issue or question scheduled for hearing and decision by him at such hearing which affects or may affect the rights of such defaulting party, and such defaulting party shall have no right of appeal under the provisions of this chapter.

(7) All decisions of the commissioner with respect to the hearings provided for in this section shall be incorporated into orders of the commissioner. All such orders shall be made available during normal office hours for inspection by interested persons.

(8) It shall be the duty of the sheriffs and constables of the counties of this state and of any employee of the commissioner, when so directed by the commissioner, to execute any summons, citation or subpoena which the

commissioner may cause to be issued and to make his return thereof to the commissioner. The sheriffs and constables so serving and returning same shall be paid for so doing fees provided for such services in the circuit court. Any person who appears before the commissioner or a duly designated employee of his department in response to a summons, citation or subpoena shall be paid the same witness fee and mileage allowance as witnesses in the circuit court. In case of failure or refusal on the part of any person to comply with any summons, citation or subpoena issued and served as above authorized or in the case of the refusal of any person to testify or answer to any matter regarding which he may be lawfully interrogated or the refusal of any person to produce his record books and accounts relating to any matter regarding which he may be lawfully interrogated, the chancery court of any county of the State of Mississippi, or any chancellor of any such court in vacation, may, on application of the commissioner, issue an attachment for such person and compel him to comply with such summons, citation or subpoena and to attend before the commissioner or his designated employee and to produce the documents specified in any subpoena duces tecum and give his testimony upon such matters as he may be lawfully required. Any such chancery court, or any chancellor of any such court in vacation, shall have the power to punish for contempt as in case of disobedience of like process issued from or by any such chancery court, or by refusal to testify therein in response to such process, and such person shall be taxed with the costs of such proceedings.

(9) The following procedure shall govern in taking and perfecting appeals:

(a) Any person who is a party to any hearing before the commissioner and who is aggrieved by any decision of the commissioner with respect to any hearing before him, unless prevented by the provisions of subsection (6) of this section, shall have the right of appeal to the chancery court of the county of such person's residence or principal place of business within this state, but if any such person is a nonresident of this state he shall have the right of appeal to the chancery court of the First Judicial District of Hinds County, Mississippi. All such appeals shall be taken and perfected within sixty (60) days from the date of the decision of the commissioner which is the subject of the appeal, and the chancery court to which such appeal is taken may affirm such decision or reverse and remand the same to the commissioner for further proceedings as justice may require or dismiss such decision. All such appeals shall be taken and perfected, heard and determined, either in term time or in vacation, on the record, including a transcript of pleadings and evidence, both oral and documentary, heard and filed before the commissioner. In perfecting any appeal provided by this chapter, the provisions of law respecting notice to the reporter and allowance of bills of exceptions, now or hereafter in force, respecting appeals from the chancery court to the supreme court shall be applicable, provided, however, that the reporter shall transcribe his notes, taken stenographically or by machine, and file the record with the commissioner within thirty (30) days after approval of the appeal bond, unless, on application of the reporter, or of the appellant, an additional fifteen (15) days shall have been allowed by the commissioner to the reporter within which to transcribe his notes and file the transcript of the record with the commission.

(b) Upon the filing with the commissioner of a petition of appeal to the proper chancery court, it shall be the duty of the commissioner, as promptly as possible, and in any event within sixty (60) days after approval of the appeal bond, to file with the clerk of said chancery court to which the appeal is taken, a copy of the petition for appeal and of the decision appealed from, and the original and one (1) copy of the transcript of the record of the proceedings and evidence before the commission. After the filing of said petition, the appeal shall be perfected by the filing of a bond in the penal sum of five hundred dollars ($500.00) with two (2) sureties or with a surety company qualified to do business in Mississippi as surety, conditioned to pay the costs of such appeal, said bond to be approved by the commissioner or by the clerk of the chancery court to which such appeal is taken.

(10) No decision of the commissioner made as a result of a hearing under the provisions of this section shall become final with respect to any party affected and aggrieved by such decision until such party shall have exhausted or shall have had an opportunity to exhaust all of his remedies provided for by this section; provided, however, any such decision may be made final if the commissioner finds that failure to do so would be detrimental to the public interest or public welfare, but the finality of any such decision shall not prevent any party or parties affected and aggrieved thereby to appeal the same in accordance with the appellate procedure set forth in this section.

(11) The commissioner shall prescribe his rules of order or procedure in hearings or other proceedings before it under this chapter; provided, however, that such rules of order or procedure shall not be in conflict or contrary to the provisions of this section.

SOURCES: Codes, 1942, § 5131-107; Laws, 1970, ch. 494, § 7, eff from and after July 1, 1970.

Cross References — Court's power to punish for contempt, see § 9-1-17.
Process, generally, see § 13-3-1 et seq.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

§ 75-49-15. Exemptions or exceptions with respect to factory-built homes produced in other states.

In the issuance of rules and regulations hereon, the commissioner may provide appropriate exemption or exception with respect to factory-built homes produced in other states, upon his determining that the applicable rules and codes of such state of manufacture provide safeguards equally effective to those otherwise applicable under this chapter and rules made under this chapter.

SOURCES: Codes, 1942, § 5131-108; Laws, 1970, ch. 494, § 8; Laws, 1992, ch. 494, § 7, eff from and after July 1, 1992.

§ 75-49-17. Enforcement.

No person may interfere, obstruct or hinder an authorized representative of the commissioner who displays proper department credentials in the performance of his duties as set forth in the provisions of this chapter.

SOURCES: Codes, 1942, § 5131-109; Laws, 1970, ch. 494, § 9, eff from and after July 1, 1970.

§ 75-49-19. Violations; penalties; exceptions.

(1) Any person who knowingly and willfully violates any of the provisions of this chapter or any rules and regulations made hereunder shall be liable to the State of Mississippi for a civil penalty of not more than One Thousand Dollars ($1,000.00) for each such violation. Each violation of a provision of this chapter or a rule or regulation made hereunder shall constitute a separate violation with respect to each factory-built home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars ($1,000,000.00) for any related series of violations occurring within one (1) year from the date of the first violation.

(2) An individual, or a director, officer or agent of a corporation, who knowingly and willfully violates any of the provisions of this chapter or any rules and regulations made hereunder in a manner which threatens the health and safety of any purchaser of a factory-built home is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000.00) or imprisoned not more than one (1) year, or both.

(3) This chapter shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that such factory-built home is not in conformity with applicable factory-built construction and safety standards, or to any person who, before to such first purchase, holds a certificate issued by the manufacturer or importer of such factory-built home to the effect that such factory-built home conforms to all applicable factory-built home construction and safety standards, unless such person knows that such factory-built home does not so conform.

(4) An individual, or a director, officer or agent of a corporation, who knowingly and willfully fails to obtain the applicable license under this chapter and who is required to obtain such license under this chapter, and who may knowingly and willfully violate any provisions of this chapter or any rules and regulations made hereafter with respect to the manufacture of, selling or distribution of, safe anchoring and blocking of a factory-built home when intended to be used for human habitation is guilty of a misdemeanor and, upon

conviction thereof, shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned not more than one (1) year, or both.

SOURCES: Codes, 1942, § 5131-110; Laws, 1970, ch. 494, § 10; Laws, 1979, ch. 353, § 3; Laws, 1992, ch. 494, § 8, eff from and after July 1, 1992.

Cross References — Authority of State Chief Deputy Fire Marshal and deputy state fire marshals to make arrests and execute all warrants for violations of this chapter and Chapter 11, Title 45, see § 45-11-1.

Auctions of factory-built homes subject to penalties provided in this section, see § 73-4-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Liability for injury or death allegedly caused by defect in mobile home or trailer. 81 A.L.R.3d 421.

Am Jur. 53A Am. Jur. 2d, Mobile Homes and Trailer Parks § 21 et seq.

§ 75-49-21. Permit fees for manufactured or mobile homes.

The board of supervisors of any county may charge a permit fee not to exceed Fifty Dollars ($50.00) to the owner of any manufactured or mobile home, as defined in this chapter, if the county performs installation inspections; however, the board of supervisors of any county having a population of more than seventy-five thousand (75,000), according, to the most recent federal decennial census, may charge a permit fee not to exceed One Hundred Dollars ($100.00). The county may require the permit fee to be paid before a manufactured or mobile home is set up within the boundaries of the county and the fee shall cover all the costs of the inspection of the manufactured or mobile home relating to installation, blocking, anchoring and tie-down and safety standards of manufactured or mobile homes.

SOURCES: Laws, 1994, ch. 611, § 1, eff from and after July 1, 1994.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by substituting "as defined in this chapter" for "as defined in the Uniform Standards Code for Factory Manufactured Movable Homes Law." The Joint Committee ratified the correction at its July 22, 2010, meeting.

CHAPTER 51

Water Heaters

Sec.

75-51-1. Pressure-temperature relief valves to be provided and installed; prohibited sales and installations.

75-51-3. Specifications for and installation of relief valves.

75-51-5. Installation or sale of certain untested devices prohibited.

75-51-7. Markings on, and standards for, hot water storage hot water storage tanks.

75-51-9. Chapter inapplicable to prior installations.

75-51-11. Penalties for violations.

§ 75-51-1. Pressure-temperature relief valves to be provided and installed; prohibited sales and installations.

All water heaters installed in any dwelling or in any other building within the state shall be provided with an approved self-closing (levered) water pressure relief valve and temperature relief valve or combination thereof.

No individual, firm, corporation or business shall install any new automatic hot water tank or heater of one hundred twenty (120) gallon capacity or less without installing thereon a pressure-temperature relief valve so labeled by the manufacturer's identification stamp or cast upon the valve or upon a plate secured to it.

No individual, firm, corporation or business shall install, re-install or re-locate any existing automatic hot water tank or heater of one hundred twenty (120) gallon capacity or less without installing on such tank or heater an approved type water pressure relief valve and temperature relief valve or combination thereof.

No individual, firm, corporation or business shall install, sell or offer for sale any relief valve, whether it be pressure type, temperature type or pressure-temperature type, which does not carry the stamp of approval of the American Society of Mechanical Engineers or the American Gas Association.

SOURCES: Codes, 1942, § 5131-61; Laws, 1968, ch. 529, § 1, eff 60 days from and after passage (approved August 7, 1968).

Cross References — Applicability of chapter to re-installations, see § 75-51-9.

RESEARCH REFERENCES

ALR. Liability of manufacturer or seller for injury caused by household and domestic machinery, appliances, furnishing and equipment. 80 A.L.R.2d 598.

Landlord's liability for personal injury or death of tenant or his privies from plumbing system or equipment. 84 A.L.R.2d 1143.

Am Jur. 10 Am. Jur. Pl & Pr Forms (Rev), Explosions and Explosives, Form 91 (complaint, petition, or declaration; for injuries resulting from explosion of water heater).

13 Am. Jur. Trials, Boiler Explosion Cases, p 343.

12 Am. Jur. Proof of Facts, Water

Heater Explosions, Proof No. 1 (testimony of metallurgist).

CJS. 15 C.J.S., Commerce § 36.

§ 75-51-3. Specifications for and installation of relief valves.

Temperature and pressure relief valves, or combinations thereof shall have thermosetting of not more than two hundred ten (210) degrees fahrenheit and pressure setting not to exceed the tank or heater manufacturer's rated working pressure. The relieving capacity of these two (2) devices shall each equal or exceed the heat input to the water heater or storage tank.

Temperature type or pressure-temperature type valves shall be installed in the shell of the water heater tank or may be installed in the hot water outlet, provided the thermo-bulb extends into the shell of the tank, and in all cases installed at the highest practical point. For installations with separate storage tank, said valves shall all be installed on the tank and there shall not be any type of valve installed between the water heater and the storage tank. Temperature relief valves shall be so located in the tank as to be actuated by the water in the top one-eighth (⅛) of the tank served.

Pressure relief valves may be located adjacent to the equipment they serve. There shall be no check valve or shut-off valve between a relief valve and the heater or tank for which it is installed.

The outlet of a pressure, temperature, or other relief valve shall not be connected to the drainage system as a direct waste.

SOURCES: Codes, 1942, § 5131-62; Laws, 1968, ch. 529, § 2, eff 60 days from and after passage (approved August 7, 1968).

§ 75-51-5. Installation or sale of certain untested devices prohibited.

No individual, firm, corporation or business shall install, reinstall, relocate, sell or offer for sale any hot water supply storage tanks or heaters of one hundred twenty (120) gallon capacity or less which utilize dip tubes, supply and hot water nipples, supply water baffles or heat traps that have not been tested to withstand a temperature of two hundred twenty-five (225) degrees Fahrenheit without deteriorating in any manner, and such tank or heater shall be so labeled by the manufacturer.

No individual, firm, corporation or business shall install, sell, or offer for sale any water baffles or heat traps, which are not constructed and tested to withstand a temperature of two hundred twenty-five (225) degrees Fahrenheit without deterioration in any manner, and such baffles or heat traps shall be so labeled by the manufacturer.

SOURCES: Codes, 1942, § 5131-63; Laws, 1968, ch. 529, § 3, eff 60 days from and after passage (approved August 7, 1968); Laws, 1999, ch. 317, § 1, eff from and after July 1, 1999.

§ 75-51-7. Markings on, and standards for, hot water storage hot water storage tanks.

Any storage tank hereafter installed for domestic hot water shall have clearly and indelibly stamped in the metal, or so marked upon a plate welded thereto, or otherwise permanently attached, the maximum allowable working pressure. Such markings shall be in an accessible position outside of the tank so as to make inspection or reinspection readily possible. All storage tanks for domestic hot water shall meet the applicable American Society of Mechanical Engineers or American Gas Association standards.

SOURCES: Codes, 1942, § 5131-64; Laws, 1968, ch. 529, § 4, eff 60 days from and after passage (approved August 7, 1968).

§ 75-51-9. Chapter inapplicable to prior installations.

The provisions of this chapter shall not apply to water heaters installed prior to October 6, 1968, except with respect to re-installation thereof as provided in Section 75-51-1 hereof.

SOURCES: Codes, 1942, § 5131-65; Laws, 1968, ch. 529, § 5, eff 60 days from and after passage (approved August 7, 1968).

§ 75-51-11. Penalties for violations.

Any person violating the provisions of this chapter, upon conviction, shall be fined not less than one hundred dollars ($100.00) nor more than three hundred dollars ($300.00), and each such sale, installation, or re-installation shall be a separate violation hereof if not effected in accordance with this chapter.

SOURCES: Codes, 1942, § 5131-66; Laws, 1968, ch. 529, § 6, eff 60 days from and after passage (approved August 7, 1968).

CHAPTER 53

Paints, Varnishes and Similar Materials

Sec.

75-53-1. Labeling requirements; penalty for violations.
75-53-3. Term "paint" defined.
75-53-5. Receptacles to bear labels.
75-53-7. Misbranding; what deemed to be.
75-53-9. State chemist to enforce this chapter.
75-53-11. Authority and duties of state chemist and inspectors.
75-53-13. Penalty for hindering inspectors.
75-53-15. Article found to be adulterated; procedure.
75-53-17. Duty of district attorney.

§ 75-53-1. Labeling requirements; penalty for violations.

It shall be unlawful for any person, firm or corporation within this state to manufacture for sale, sell, or exchange, or to offer or to keep for sale or exchange any paint, putty, linseed oil or other paint oils, turpentine or varnish that is not labeled in accordance with the provisions of this chapter, or which is adulterated or misbranded or insufficiently labeled or branded. Any person, firm, or corporation violating any provision hereof shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than twenty-five dollars ($25.00), and not more than one hundred dollars ($100.00) for the first offense, and not less than fifty dollars ($50.00) and not more than two hundred dollars ($200.00) for each subsequent offense.

SOURCES: Codes, Hemingway's 1921 Supp. § 6166a; 1930, § 5667; 1942, § 5123; Laws, 1920, ch. 324.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 54A Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 1232 et seq.

30 Am. Jur. Proof of Facts 2d 575, Paint or Lacquer Vapor Explosions.

CJS. 15 C.J.S., Commerce § 21.

§ 75-53-3. Term "paint" defined.

The term paint as used herein shall include all substances, whether dry or ground in oil, used or intended for use as paint or as components of paint. It shall include paste and semipaste paints, house, carriage, wagon, barn, floor, roof, and implement paints and enamels, and all kinds of liquid and ready mixed paints. It shall not include artists' colors, liquid bronzes, colors intended to be mixed with water for decorative purposes, wood fillers, stove polishes or stove enamels, and shingle and roof stains.

SOURCES: Codes, Hemingway's 1921 Supp. § 6166b; 1930, § 5668; 1942, § 5124; Laws, 1920, ch. 324.

Cross References — Labeling requirements for paints as defined in this section, see § 75-53-5.

§ 75-53-5. Receptacles to bear labels.

Every container or receptacle of paint, putty, linseed oil, or other paint oils, turpentine, and varnish sold, exchanged, or offered or kept for sale or exchange, shall bear a label printed in legible type in English stating:

(a) The kind of paint or material in the container, and the name and residence of the manufacturer by whom made and the name and residence of the distributor, person or firm for whom made.

(b) The volume, if sold by volume; and the net weight if sold by weight.

(c) In case of putty and also of paints as defined in Section 75-53-3, the name and the percentage of each component or constituent, both solid and liquid, and also on a separate place or places on the label the percentage composition of the color or coloring material, or materials, used.

(d) In the case of varnish and colors in varnish, the percentage of rosin, benzine, naphtha, gasoline, mineral oil, or hydrocarbon oil.

(e) In the case of mixed oils, the percentage by volume of each and every oil in the mixture.

SOURCES: Codes, Hemingway's 1921 Supp. § 6166c; 1930, § 5669; 1942, § 5125; Laws, 1920, ch. 324.

Cross References — Regulation of weights and measures, see § 75-27-1 et seq.

§ 75-53-7. Misbranding; what deemed to be.

For the purposes of this chapter, paint, putty, linseed oil, or other paint oils, turpentine, and varnish shall be deemed to be misbranded if the container is labeled or marked in any manner that tends to deceive the purchaser as to the nature, composition, volume, or weight of the contents thereof. The same shall be insufficiently branded if the label fails to give fully the information required herein. The same shall be deemed to be adulterated if, for any component or constituent stated on the label, some other component or constituent is substituted in whole or in part.

SOURCES: Codes, Hemingway's 1921 Supp. § 6166d; 1930, § 5670; 1942, § 5126; Laws, 1920, ch. 324.

§ 75-53-9. State chemist to enforce this chapter.

The state chemist is hereby charged with the enforcement of the provisions of this chapter. He shall also prepare such rules and regulations as are necessary to carry its intent and purpose into effect. The collection, examination, and analysis of specimens of paint, putty, linseed oil and other paint oils, turpentine, and varnish shall be carried out under his direction by duly authorized inspectors and analysis.

SOURCES: Codes, Hemingway's 1921 Supp. § 6166e; 1930, § 5671; 1942, § 5127; Laws, 1920, ch. 324.

§ 75-53-11. Authority and duties of state chemist and inspectors.

Specimens for examination and analysis shall be taken by the state chemist or by duly authorized inspectors. In the execution of their duties, inspectors shall have access during reasonable business hours to places where paint, putty, linseed oil, or other paint oils, turpentine, or varnish is sold, and they shall tender the owner the market price for all specimens taken by them.

SOURCES: Codes, Hemingway's 1921 Supp. § 6166f; 1930, § 5672; 1942, § 5128; Laws, 1920, ch. 324.

§ 75-53-13. Penalty for hindering inspectors.

Any person who shall hinder or obstruct an inspector in the performance of his duty shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars ($25.00) and not more than fifty dollars ($50.00).

SOURCES: Codes, Hemingway's 1921 Supp. § 6166g; 1930, § 5673; 1942, § 5129; Laws, 1920, ch. 324.

Cross References — Obstruction of justice, see §§ 97-9-55, 97-9-69, 97-9-71, 97-9-75.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-53-15. Article found to be adulterated; procedure.

When it shall appear from an examination or analysis that a specimen or sample of paint, putty, linseed oil or other paint oils, turpentine, or varnish is misbranded, or insufficiently branded or labeled or adulterated, the state chemist shall give notice thereof to the person or firm from whom such specimen was obtained, and such person or firm shall have an opportunity to be heard. If it should then appear that any of the provisions hereof have been violated, the state chemist shall certify the facts to the proper district attorney, together with a copy of the results of the examination or analysis duly authenticated by the chemist or officer making the examination or analysis, and the certificate of analysis or examination of such chemist or officer, when duly sworn to, shall be prima facie evidence of the facts therein certified.

SOURCES: Codes, Hemingway's 1921 Supp. § 6166h; 1930, § 5674; 1942, § 5130; Laws, 1920, ch. 324.

§ 75-53-17. Duty of district attorney.

It shall be the duty of such district attorney to whom the state chemist shall report any violation of this chapter to cause proceedings to be commenced and prosecuted in the proper court without delay for the enforcement of the penalties herein provided in such cases.

SOURCES: Codes, Hemingway's 1921 Supp. § 6166i; 1930, § 5675; 1942, § 5131; Laws, 1920, ch. 324.

CHAPTER 55

Gasoline and Petroleum Products

Sec.

75-55-1. Title.
75-55-3. Administration and enforcement of chapter.
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75-55-39. Repealed.
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75-55-41. Application of testing methods.

§ 75-55-1. Title.

This chapter shall be known as the "Petroleum Products Inspection Law of Mississippi."

SOURCES: Codes, 1942, § 5081; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 1.

Cross References — Gasoline taxes, see § 27-55-1 et seq.
Tax on motor fuels other than gasoline, see § 27-55-501 et seq.
Tax on oils, see § 27-57-1 et seq.
Liquefied Compressed Gas Equipment Inspection Law, see § 75-57-1 et seq.

JUDICIAL DECISIONS

1. In general.

The performance of the statutory duty of making the inspections and tests of petroleum products sold in the state cannot be delegated to an undisclosed manufacturer residing outside of the state and having no agents in the state. Gordy v. Pan Am. Petro. Corp., 188 Miss. 313, 193 So. 29 (1940).

If a petroleum corporation delivered to a bulk station operator a car of kerosene suitable for illuminating purposes which could be used without dangerous consequences to the retail trade, the sale by the retailer of a petroleum product in the nature of gasoline as being kerosene, created no liability against such petroleum corporation even if it failed to comply with the statutory requirements as regards tests and inspections and the labeling of the product, since such failure would not constitute the proximate cause of the injury complained of. Gordy v. Pan Am. Petro. Corp., 188 Miss. 313, 193 So. 29 (1940).

An earlier form of this statute (L 1936, c 163) was construed as making it the duty of the seller of petroleum products in this state to know the contents of a shipment which he markets for use or resale. Gordy v. Pan Am. Petro. Corp., 188 Miss. 313, 193 So. 29 (1940).

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 1 et seq.

CJS. 15 C.J.S., Commerce § 56.

§ 75-55-3. Administration and enforcement of chapter.

(1) The Commissioner of Agriculture and Commerce, hereinafter referred to as the "commissioner," is vested with power and authority and is charged with the duty of administering and enforcing the provisions of this chapter which pertain to signs; the labeling of pumps, tanks and other packages and containers; to trade names; and to scales, pumps and measuring equipment, and he shall have the authority to establish rules and regulations not inconsistent herewith in connection with its enforcement.

(2) The State Chemist is vested with power and authority and is charged with the duty of administering the provisions of this chapter which authorize the analysis of samples and the operation of the petroleum products laboratory, and he shall have the authority to establish rules and regulations in connection with its enforcement.

(3) The commissioner and the State Chemist shall have joint authority for setting specifications of petroleum products and shall have the authority to establish rules and regulations in connection with the enforcement of this chapter.

SOURCES: Codes, 1942, § 5082; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 2 1980, ch. 561, § 25; Laws, 1981, ch. 468, § 72; Laws, 1986, ch. 395, § 6; Laws, 1988, ch. 482, § 1; Laws, 1990, ch. 450, § 1; Laws, 1994, ch. 403 § 1, eff from and after passage (approved March 15, 1994).

Cross References — State Chemical Laboratory, generally, see §§ 57-21-1 et seq.
Department of Agriculture and Commerce, generally, see §§ 69-1-1 et seq.

Administration of the liquefied compressed gas inspection law, see § 75-57-3.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil §§ 144 et seq.

§ 75-55-5. Definitions; specifications; rules and regulations [Repealed effective July 1, 2020].

(1) The words, terms and phrases as used in this chapter shall have the following meanings, unless the context requires otherwise:

(a) The term "commissioner" means the Commissioner of the Mississippi Department of Agriculture and Commerce, or his agents and employees.

(b) The term "State Chemist" means the Director of the Mississippi State Chemical Laboratory, or his agents and employees.

(c) The term "ASTM" means an international voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services, and the promotion of related knowledge.

(d) The term "person" shall include any individual, firm, copartnership, joint venture, association, corporation, estate, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(e) The term "illuminating oil" shall include coal oil, kerosene or other petroleum products used for illuminating purposes.

(f) The term "lubricating oil" means all petroleum-based oils or synthetic lubricants intended for use in the crankcase of an internal combustion engine, either spark ignition or diesel type. The purpose of the lubricating oil is to reduce friction between two (2) solid surfaces moving relative to one another.

(g) The term "gasoline pump" shall include pumps, meters and all measuring devices used for measuring gasoline and all oxygenated blended fuels; the term "diesel fuel pump" shall include pumps, meters and all measuring devices used for measuring diesel fuel; the term "kerosene pump" shall include pumps, meters and all measuring devices used for measuring kerosene; the term "liquefied compressed gas pump" shall include pumps, meters and all measuring devices used for measuring liquefied compressed gas.

(h) The term "gasoline" shall include (i) all products commonly or commercially known or sold as gasoline (excluding casing head and absorption or natural gasoline) regardless of their classification or uses; and (ii) a volatile mixture of liquid hydrocarbons, generally containing small amounts of additives, suitable for use as a fuel in spark ignition, internal combustion engines.

(i) The term "commercial gasoline" shall mean a liquid suitable for use as a fuel in spark ignition combustion engines, and shall be free of undissolved water, suspended matter and of any harmful ingredient or component and which, in addition, meets the following test requirements as set out in ASTM D4814, and it shall be the intent of this chapter that the state specifications may be kept current with ASTM D4814 as illustrated below:

(i) Corrosion ASTM D130. A clean copper strip shall not show more than extremely slight discoloration equivalent to ASTM Strip No. 1, when submerged in the gasoline for three (3) hours at one hundred twenty-two degrees (122°) Fahrenheit, as determined by ASTM D130.

(ii) Distillation range. For each month the distillation range shall be that specified by the vapor pressure class requirement for that month. Distillation temperature limits shall be consistent with the corresponding vapor pressure class during the months affected by federal or state regulation which restrict vapor pressure. If the vapor pressure limit is between two (2) classes, the distillation temperature limits of the least restrictive class shall be acceptable. The method of test shall be ASTM D86.

(iii) Residue. The residue, after evaporation, shall not exceed two percent (2%), as determined by ASTM D86.

(iv) Gum test. The gum shall not exceed five (5) milligrams per one hundred (100) milliliters, after the extraction of the residue with a-heptane, as determined by ASTM D381.

(v) Sulphur. The sulphur content shall not exceed ten one-hundredths percent (0.10%) for unleaded gasoline or fifteen one-hundredths percent (0.15%) for leaded gasoline, as determined by ASTM D2622 or D4045.

(vi) Vapor pressure. The vapor pressure during the months of July and August shall not exceed ten (10) pounds per square inch at one hundred degrees (100°) Fahrenheit, and during the months of November, December, January, February and March shall not exceed thirteen and one-half (13-½) pounds per square inch at one hundred degrees (100°) Fahrenheit.

The vapor pressure during the remaining months of the year shall not exceed eleven and five-tenths (11.5) pounds per square inch at one hundred degrees (100°) Fahrenheit. The method of determination shall be ASTM D4953. Federal or state regulation restricting vapor pressure to lower levels shall preempt these standards during the applicable months.

(vii) Vapor liquid equilibrium. A maximum value of twenty (20) for the vapor liquid equilibrium test during the months July and August shall be obtained at a temperature of one hundred thirty-three degrees (133°) Fahrenheit; for the months of November, December, January, February and March it shall be obtained at a temperature of one hundred sixteen degrees (116°) Fahrenheit; for the other months of the year it shall be obtained at one hundred twenty-four degrees (124°) Fahrenheit. The method of determination shall be ASTM D2533 or ASTM D4814, appendix X2.

(viii) Lead specifications. The unleaded gasoline shall contain less than five hundredths (0.05) gram of lead per gallon, and the leaded gasoline shall contain a minimum of five hundredths (0.05) gram of lead and less than four and two-tenths (4.2) grams of lead per gallon. The method of analysis should be ASTM D3237, (Atomic Absorption Spectrometry), ASTM D2599 (X-ray Spectrometry) or ASTM D2547 (Volumetric Chromate).

(ix) Classification.

1. "Leaded premium grade gasoline" shall have an (R + M)/2 octane antiknock index of at least ninety-three (93). The research octane number shall be at least ninety-six (96).

2. "Unleaded premium grade gasoline" shall have an (R + M)/2 octane antiknock index of at least ninety-one (91). The research octane number shall be at least ninety-four (94).

3. "Mid-grade unleaded gasoline" shall have an (R + M)/2 octane antiknock index of at least eighty-nine (89). The research octane number shall be at least ninety-two (92).

4. "Leaded regular grade gasoline" shall have an (R + M)/2 octane antiknock index of at least eighty-nine (89). The research octane number shall be at least ninety (90).

5. "Unleaded regular grade gasoline" shall have an (R + M)/2 octane antiknock index of at least eighty-seven (87). The research octane number shall be at least ninety (90), and the motor octane number shall be at least eighty-two (82).

6. "Third-grade gasoline" shall have an (R + M)/2 octane antiknock of not more than eighty-seven (87).

The methods of octane determination shall be ASTM D2699 for the research octane number (R) and ASTM D2700 for the motor octane number (M), or ASTM D2885 for both the research octane number and the motor octane number. The (R + M)/2 octane antiknock index shall be the average of the research and motor octane numbers. All retail pumps or delivery devices shall be labeled with the appropriate (R + M)/2 octane antiknock index in accordance with the Federal Trade Commission Octane Posting and Certification Regulation 306. No commercial gasoline shall be colored mahogany.

(j) The term "oxygenated fuel" means a liquid fuel which is a homogeneous blend of hydrocarbons and oxygenates. The term "oxygenate" means an oxygen containing ashless organic compound which may be used as a fuel supplement or additive and includes alcohols and ethers. "Gasoline-oxygenate blend" means a blend consisting primarily of gasoline and a substantial amount of one or more oxygenates. This definition includes, but is not limited to, the following designations:

(i) "Gasohol" meaning any motor fuel containing a nominal ten (10) volume percent anhydrous denatured alcohol and ninety (90) volume percent unleaded gasoline, regardless of other name, label or designation.

(ii) "Leaded gasohol" meaning any motor fuel containing a nominal ten (10) volume percent anhydrous, denatured ethanol and ninety (90) volume percent leaded gasoline, regardless of other name, label or designation.

(iii) Any gasoline-oxygenate blend which meets the United States Environmental Protection Agency's "substantially similar" rule, Section 211(f)(1) of the Clean Air Act, 42 USCS 7545(f)(1).

(iv) Any gasoline-oxygenate blend for which there is an existing Clean Air Act waiver issued by the United States Environmental Protection Agency.

(k) "Alcohol blended fuel" means gasohol or leaded gasohol.

(*l*) "Anhydrous, denatured ethyl alcohol (ethanol)" means normal two hundred (200) proof ethanol to which has been added a maximum of five (5) volumes of approved denaturant(s) to one hundred (100) volumes of ethanol and containing not more than one and twenty-five hundredths percent (1.25%) water by weight as determined by ASTM E203.

(m) "Approved denaturant(s)" means materials used for denaturing ethyl alcohol for use as a motor fuel which have been approved by the United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, and both the State Chemist and the Commissioner of Agriculture and Commerce. Gasoline-oxygenate blends shall meet the specifications set forth in the most recent edition of the Annual Book of ASTM standards and supplements thereto, and revisions thereof, except where amended or modified by the Commissioner and State Chemist.

(n) The term "oil" as used in this chapter shall include diesel fuel, kerosene, fuel oil, distillate, gas oil, tractor fuel or any other product other than gasoline, as defined in this chapter, which is usable as fuel in an internal combustion engine, and any product which, on distillation in accordance with the method of test of the American Society for Testing and Materials shows not more than ten percent (10%) recovered when the thermometer shows two hundred sixty-one degrees (261°) Fahrenheit; and not more than ninety-five percent (95%) recovered when the thermometer shows four hundred sixty-five degrees (465°) Fahrenheit or more; provided that nothing in this paragraph shall be construed to include oils received or sold as lubricants when such oils cannot be used as a fuel in internal combustion engines.

(o) "Diesel fuel" is any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without the presence of an electric spark.

Specifications: The fuel oils herein specified shall be hydrocarbon oils free from acids, grit and fibrous or other foreign material. Three (3) grades of such oils are specified and these shall conform to the detailed requirements in the current American Society for Testing and Materials Specifications for Diesel Fuel Oils (ASTM D975), except for the sulphur content of Grade 2-D. All tests shall be in accordance with the applicable American Society for Testing and Materials method as set forth in the current ASTM Designation D975. Diesel fuel requirements are listed below:

	Grade 1-D	Grade 2-D	Grade 4-D
Flash point, degrees F. D93	Min. 100	Min. 125	Min. 130
Water & sediment, % by volume, D1796	Max. 0.05	Max. 0.05	Max. 0.5
Carbon residue on 10% residium, % D524	Max. 0.15	Max. 0.35	________
Ash, % by weight, D482	Max. 0.01	Max. 0.01	Max. 0.1
Distillation, 90% point, degrees F., D86	________	Min. 540	________
	Max. 550	Max. 640	________
Viscosity @ 100 degrees F. kinematic-centistokes D445	Min. 1.3	Min. 2.0	Min. 5.5
or	Max. 2.4	Max. 4.1	Max. 24.0
Viscosity @ 100 degrees F., Saybolt Universal Sec.	________	Min. 32.6	Min. 45
	Max. 34.4	Max. 40.1	Max. 125
Sulphur, % by weight, D129	Max. 0.5	Max. 1.0	Max. 2.0
Copper strip corrosion, D130	Max. No. 3	Max. No. 3	________
Cetane number, D613 or D976	Min. 40	Min. 40	Min. 30

(p) The word "kerosene" shall include lamp oil, illuminating oil and coal oil which shall conform to the detailed requirements set forth in the current American Society for Testing and Materials Specification for Kerosene (ASTM D3699). All tests shall be in accordance with the applicable American Society for Testing and Material Methods as set forth in ASTM D3699. The detailed requirements are listed below:

(i) The oil shall be free of water and suspended matter.

(ii) The color shall not be darker than number plus sixteen (16) on the Saybolt scale, as determined by ASTM D156.

(iii) The flash point shall, by ASTM D56, not be lower than one hundred degrees (100°) Fahrenheit when determined in Tagliabue closed type tester, as determined by ASTM D56.

(iv) The sulphur content shall not exceed four one-hundredths percent (0.04%) for No. 1-K kerosene and thirty one-hundredths percent (0.30%) for No. 2-K kerosene. The method of determination shall be ASTM D1266. No. 1-K kerosene is a special low-sulphur grade kerosene suitable for use in nonflue-connected kerosene burner appliances and in wick-fed illuminating lamps. No. 2-K kerosene is suitable for use in flue-connected burner appliances and in wick-fed illuminating lamps.

(v) The distillation ten percent (10%) point shall not be higher than four hundred one degrees (401°) Fahrenheit, as determined by ASTM D86.

(vi) The distillation end point shall not be higher than five hundred seventy-two degrees (572°) Fahrenheit, as determined by ASTM D86.

(vii) The oil shall not show a cloud point at five degrees (5°) Fahrenheit, as determined by ASTM D2500.

(viii) The oil shall burn freely and steadily for sixteen (16) hours, as determined by ASTM D187.

(ix) The gravity shall not be less than degrees API 41, as determined by ASTM D1298.

(x) The corrosion test results shall be No. 1 Maximum in a three-hour at two hundred twelve degrees (212°) Fahrenheit test, as determined by ASTM D130.

(q) Racing gasoline means any gasoline which is sold for racing purposes. Racing gasoline may be sold from retail dispensing equipment under the following conditions:

(i) The product brand name and octane number shall be registered with the Commissioner of Agriculture and Commerce and the State Chemist.

(ii) The manufacturer shall forward a list of marketers selling these product(s) and the product(s) being sold by each marketer.

(iii) Marketers shall register their retail outlets by location and provide a list of the product(s) sold for each retail outlet.

(iv) The dispensing equipment shall contain a conspicuous sign stating that the fuel is racing gasoline. The dispensing equipment shall not contain any kind of representation indicating that the product is suitable for vehicles other than for racing.

(v) The dispensing equipment shall be dedicated to and isolated from any other motor fuel dispensing equipment in a manner that a vehicle cannot access both the commercial gasoline and the racing gasoline at the same time.

(vi) Any violation shall result in revocation of the approval to market and/or confiscation of the product.

(vii) The Commissioner of Agriculture and Commerce (the "commissioner") and the State Chemist are hereby given authority to change the specifications set forth in this section to comply with the currently recommended ASTM or federally required specifications.

(2) This section shall stand repealed on July 1, 2020.

SOURCES: Codes, 1942, § 5083; Laws, 1938, ch. 145; Laws, 1942, ch. 245; Laws, 1946, ch. 263, § 3; Laws, 1948, ch. 316, § 1; Laws, 1950, ch. 477, § 1; Laws, 1952, ch. 345, § 1; Laws, 1956, ch. 394; Laws, 1958, ch. 187; Laws, 1962, ch. 195; Laws, 1966, ch. 624, § 1; Laws, 1969, Ex Sess, ch. 24, § 1; Laws, 1978, ch. 357, § 1; Laws, 1980, ch. 417, § 1; Laws, 1984, ch. 452, § 2; Laws, 1986, ch. 395, § 7; Laws, 1988, ch. 482, § 2; Laws, 1990, ch. 450, § 2; Laws, 2008, ch. 486, § 1; Laws, 2010, ch. 397, § 1; Laws, 2013, ch. 372, § 1; Laws, 2016, ch. 402, § 1, eff from and after July 1, 2016.

Editor's Note — Laws of 1978, ch. 357, § 4, provides as follows:

"SECTION 4. For all times in the future, standards found herein shall be altered to coincide with the American Society for Testing and Materials standards or other standards deemed acceptable by the motor vehicle comptroller."

Laws of 1984, ch. 452, § 3, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws prior to July 1, 1984, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1984, or shall thereafter be begun; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to July 1, 1984, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Amendment Notes — The 2016 amendment deleted "degrees" following, and inserted "degrees" preceding, numeric parenthetical degree amounts throughout (1); and extended the repealer for the section by substituting "July 1, 2020" for "July 1, 2016" in (2).

Cross References — Exemption of alcohol blended fuel from sales taxes, see § 27-65-111.

Transfer of calibrating equipment to Department of Agriculture and Commerce, see § 75-55-20.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil §§ 144 et seq.

§ 75-55-6. Name and/or brand name; registration; octane rating; forms; motor fuel pumps; appeal from denial of registration; termination of registration; prohibitions.

(1) Products regulated under terms of the Petroleum Products Inspection Law or regulations sold in this state shall have a name and/or brand name and such name shall be registered with the Mississippi Department of Agriculture and Commerce. The octane rating or antiknock index (R + M)/2 of applicable motor fuels, covered by the Federal Trade Commission Octane Posting and Certification Rule, shall be included in the registration. The name of the establishment, address, city, state, zip code, county and telephone number shall also be included in the registration. Registration forms shall be provided by the Mississippi Department of Agriculture and Commerce.

(2) The commissioner or his agent shall refuse the registration of any product under a name that is misleading to the purchaser of such a product.

The commissioner or his agent, in his discretion, may refuse to permit any name or brand of gasoline where a similar name or brand has already been permitted. The sale of any product under any brand name that is not registered with the department or does not meet the standards of the registration form shall not be permitted. Pumps shall be locked down until the product or products have been duly registered or brought up to specifications.

(3) Every pump dispensing motor fuel at retail shall conspicuously display the name and/or brand name being sold therefrom exactly as such name and/or brand name that is registered with the department. Each pump shall conspicuously display the octane number of the product. The octane number designation shall be changed whenever the product is changed. Each diesel pump dispensing those products at retail shall display the words "No. 1 Diesel" or "No. 2 Diesel." Each kerosene pump or fuel oil pump dispensing

those products at retail shall display the words "No. 1-K Kerosene" or "No. 2-K Kerosene" or indicate the proper grade of fuel oil depending on the product dispensed.

(4) The labeling of all petroleum products on pumps shall be on both sides of the dispensing device which faces the vehicle and shall be in a clear and conspicuous place in type of at least one-half (½) inch in height, and one-sixteenth (1⁄16) inch stroke (width of type).

(5) Any application for registration that is denied may be appealed to the commissioner within thirty (30) days from the date of denial of such application.

(6) Any person who registered a brand name for a motor fuel and fails or discontinues to sell or deliver a registered product shall notify the commissioner within sixty (60) days after date of registration or date of last invoice or delivery ticket. Failure to notify the commissioner shall automatically terminate and cancel the registration of the brand name and the quality specification.

The commissioner is further authorized and empowered following the terms of the Mississippi Administrative Procedures Act to make such reasonable rules and regulations, particularly in emergency situations, which, in his judgment, will contribute to a more efficient administration of this article. Such rules and regulations, when made, shall have the same binding force and effect as if incorporated in this article; provided further, that such rules and regulations made during the said emergency periods shall be withdrawn following cessation of any such emergencies.

The commissioner is hereby authorized to prohibit the sale of any taxable petroleum product which is not in compliance with the provisions of this chapter.

SOURCES: Laws, 1990, ch. 450, § 3; Laws, 1994, ch. 403 § 2, eff from and after passage (approved March 15, 1994).

Cross References — Exemption of gasoline, as defined in this section, from specifications required under this section, see § 75-55-7.

§ 75-55-7. Exemptions from classification, specification, and coloring.

(1) Provided, however, that gasoline, as defined in Section 75-55-5, shall not be subject to specifications required under such section, when such gasoline is purchased or received in this state for uses other than for sale or distribution to the consuming public. This exemption shall apply to gasoline that will not be used on the road.

(2) The Commissioner of Agriculture and Commerce (the "commissioner") and the State Chemist shall have authority, but are not compelled, to establish specifications for aviation and other special gasolines when received in this state for any purpose other than for use in propelling motor vehicles on the highways, or for sale or distribution to the consuming public.

(3) It is provided that the specifications adopted for gasoline shall not apply to "gas machine gasoline" prepared or received in this state for use in industrial equipment, when such gasoline is not used or not capable of use in propelling motor vehicles on the highways.

(4) The commissioner and the State Chemist shall have authority but they are not compelled to establish specifications for fuel oils and oil for other engines.

SOURCES: Codes, 1942, § 5084; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 4; Laws, 1966, ch. 624, § 2; Laws, 1969, Ex Sess, ch. 24, § 2; Laws, 1986, ch. 395, § 8; Laws, 1988, ch. 482, § 3; Laws, 1990, ch. 450, § 4, eff from and after passage (approved March 20, 1990).

Cross References — Transfer of calibrating equipment to Department of Agriculture and Commerce, see § 75-55-20.

§ 75-55-9. Signs.

Any person selling at retail gasoline, alcohol blended fuel, diesel fuel or kerosene, as defined in this chapter, shall at all times display signs as herein defined:

(a) All pumps and dispensing equipment for gasoline, alcohol blended fuel, diesel fuel or kerosene shall be marked conspicuously to show the total price per gallon of gasoline, alcohol blended fuel, diesel fuel or kerosene offered for sale, in figures of equal size and where fractional cents or figures are used therein, the combined height and width of the numerator and denominator shall be equal to the height and width of the other figures used. Provided, however, that any sign provided by the manufacturer of the retail pump or dispensing equipment which shows the total price per gallon and is part of the computing mechanism of such pumps and dispensing equipment shall be considered as being in compliance with this subsection.

(b) All signs placed on the premises of any service station and any highway, road, street or alley leading thereto advertising the price per gallon of gasoline, alcohol blended fuel, diesel fuel or kerosene offered for sale, shall show the registered brand name and total price in figures of equal size, and where fractional figures are used therein, the width of the numerator and denominator of the fraction shall be equal to one-third (⅓) of the width of the other figures, but the combined height of the numerator and denominator shall be the same as that of the other figures. Where a decimal is used, then the fraction shall be at least one-half (½) the height of the other figures used in the sign, and the fraction shall be at least one-third (⅓) of the width of the other figures used in the sign. All figures and fractional figures shall be painted the same color as the other figures used in the sign. The total price per gallon on signs located on all premises of any service station and on highways, roads, streets or alleys leading to the service station shall be in agreement as to the total price per gallon shown on the retail pump dispensing the same brand of gasoline, alcohol blended fuel, diesel fuel or kerosene as that being so advertised. All signs advertising the price per gallon of gasoline, alcohol blended fuel, diesel fuel or kerosene offered for sale through self-service operated pumps at retail service stations shall clearly indicate that the posted price per gallon and brand is offered for sale through self-service pumps.

(c) Containers of gasoline below fifty (50) gallons capacity, or any product flashing below one hundred (100) degrees Fahrenheit, shall be painted red; provided that containers, not of metal and of a capacity of one (1) gallon or less, may carry a red label designating the product.

(d) All filler pipes for petroleum bulk storage tanks and retail station storage tanks shall be identified by painting a sign on the intake pipe cap or within six (6) inches thereof in lettering not less than two (2) inches in height and not less than one-fourth (¼) inch in width the following: for premium gasoline or alcohol blended fuel, the letter "P"; for regular leaded grade gasoline or alcohol blended fuel, the letter "R"; for third grade gasoline, the letters "3G"; for unleaded gasoline or alcohol blended fuel, the letters "UG"; for diesel fuel, the letter "D"; for kerosene, the letter "K"; for lubricating oil, the letters "LO"; for tractor fuel, the letters "TF"; the letter "S" for solvent; the letter "N" for naphtha; and for any other petroleum product classified as an oil not specifically specified in this subsection, the word "oil." In addition to existing requirements, all filler pipes for bulk and retail station tanks used for the storage of nonleaded gasoline shall be further identified as follows: for nonleaded premium gasoline, the letters "NLP"; and for nonleaded regular grade gasoline, the letters "NLR". Such lettering shall be painted on the intake pipe cap or within six (6) inches thereof, and shall be not less than two (2) inches in height and not less than one-fourth (¼) inch in width. Nothing in this subsection shall apply to bulk storage tanks located at marine or pipeline terminals, nor bulk storage tanks used for the storage of liquefied compressed gas, nor prohibit "color coding" in addition to the lettering, where desired.

SOURCES: Codes, 1942, § 5086; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 6; Laws, 1950, ch. 477, § 2; Laws, 1952, ch. 345, § 2; Laws, 1954, ch. 339; Laws, 1966, ch. 624, § 3; Laws, 1969, Ex Sess, ch. 24, § 3; Laws, 1970, ch. 274, § 1; Laws, 1978, ch. 357, § 2; Laws, 1980, ch. 417, § 2; Laws, 1990, ch. 450, § 5, eff from and after passage (approved March 20, 1990).

Cross References — Inapplicability of price display requirement under weights and measures law, see § 75-27-51.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Garages, Service Stations, and Parking Facilities § 14 et seq.

38 Am. Jur. 2d, Gas and Oil § 158 et seq.

§ 75-55-11. Standard required.

No person shall sell as gasoline any product which fails to meet the standard as defined in this chapter, nor sell any gasoline at retail without exhibiting the proper signs as required in this chapter, and provided further, that all gasoline offered for sale shall always be as high octane number as advertised to be.

SOURCES: Codes, 1942, § 5087; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 7.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Garages, Service Stations, and Parking Facilities § 14 et seq.

§ 75-55-13. Lubricating oils.

It shall be unlawful to sell, offer or keep for sale, any lubricating oils, lubricants or mixtures of lubricants which are adulterated or falsely labeled in any particular. Reclaimed, recleaned, rerefined or previously used oils shall be plainly labeled and sold as such. The labeling and advertising appearing on any container used to store a previously used lubricating oil shall be strictly in accord with the kind of product contained therein. On the face of each sealed container containing a previously used motor or lubricating oil, the wording or sign used to indicate that the product has been previously used must be in well-balanced letters.

Labels on containers of reclaimed, recleaned, rerefined or recycled oil which meet the Society of Automotive Engineers (SAE) and American Petroleum Institute (API) classifications for current (one (1) of the previous two (2) chronological API service classifications) model year automotive engines shall be at least one-eighth (⅛) inch high on containers of one (1) gallon or less, and at least one-fourth (¼) inch high on containers larger than one (1) gallon.

Reclaimed, recleaned, rerefined or previously used motor or lubricating oils, lubricants or mixtures of lubricants not meeting the classifications described in the preceding paragraph shall be labeled as follows: On one (1) quart containers the lettering shall not be less than three-eighths (⅜) inches high; on one-half (½) gallon containers the lettering shall be at least one-half (½) inch high; on one (1) gallon containers the lettering shall be at least three-fourths (¾) inch high; and on five (5) gallon containers at least one (1) inch high; and on any storage can larger than five (5) gallons, a well-proportioned sign or lettering must appear with letters not less than two (2) inches high, indicating that the product has been previously used.

All tanks used for the storage of gasoline, alcohol blended fuel, other motor fuel, diesel fuel, kerosene or liquefied compressed gas, for wholesale or retail sales, shall be constructed and equipped in such manner as to allow the Commissioner of Agriculture and Commerce or his agents and employees to safely take an accurate physical inventory of the contents of such tanks at all reasonable hours.

All above ground tanks, drums or other containers used to store previously used motor or lubricating oils, before being rerefined or reprocessed, shall be marked "used oil" on a contrasting background with well-balanced letters not less than two (2) inches high.

Any person guilty of violating any of the provisions of this section shall be subject to a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) for the first offense, and for a second or subsequent such offense, such person shall be enjoined from selling or distributing previously used motor or lubricating oil in any manner in this state for a period of not less than one (1) year nor more than five (5) years, and any judge or chancellor now authorized to grant injunctions, shall grant an injunction without notice, enjoining such person from continuing in the business, as prescribed by this section.

SOURCES: Codes, 1942, § 5088; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 8; Laws, 1956, ch. 375, §§ 1, 2; Laws, 1969, Ex Sess, ch. 24, § 4; Laws, 1978, ch. 357, § 3; Laws, 1980, ch. 417, § 3; Laws, 1986, ch. 395, § 9; Laws, 1988, ch. 482, § 4; Laws, 1990, ch. 450, § 6; Laws, 1995, ch. 331, § 1; Laws, 1995, ch. 436, § 1, eff from and after July 1, 1995.

Cross References — Tax on lubricating oil, see § 27-57-1 et seq.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 158 et seq.

§ 75-55-15. Container or distributing device to indicate manufacturer or distributor or trade name of product; penalties.

No person shall store, keep, expose for sale, offer for sale, or sell from any tank or container or from any pump or other distributing device or equipment, any gasoline, alcohol blended fuel, diesel fuel, kerosene, illuminating oil, or lubricating oils or other similar products than those indicated by the name, trade name, symbol, or sign of the manufacturer or distributor of the trademark or trade name of the product appearing upon the tank, container, pump, or other distributing equipment from which the same are sold, offered for sale or distributed; provided that the product of any manufacturer may be sold from distributing equipment not bearing the name, trade name, symbol or sign of any manufacturer. Provided further, that no distributor or other person shall deliver any gasoline, alcohol blended fuel, diesel fuel, kerosene, illuminating oils, or other similar products when such products are for resale to the consuming public and place said products in storage tanks, containers, or other devices when such storage tanks, containers, or other devices are labeled contrary to the true nature of the products being delivered or when such storage tanks, containers, or other devices bear any sign, symbol, trademark, or label not reflecting the true sign, symbol, trademark or name of the product being delivered.

All distributors or other persons receiving, storing, selling or distributing gasoline, alcohol blended fuel or oil in the State of Mississippi shall have plainly marked on the tanks, pumps, or other containers in which gasoline, alcohol blended fuel or oil is kept, words designating whether the product is gasoline, alcohol blended fuel or oil. No distributor or other person shall place any gasoline in a container marked oil or alcohol blended fuel, or any oil in a container marked gasoline or alcohol blended fuel, or alcohol blended fuel in any container marked gasoline or oil, nor shall there be any pipe or other connections between oil, gasoline and alcohol blended fuel containers. Provided, however, that nothing in this or any other law shall be construed to prohibit the use at common carrier pipeline terminals, of the same unloading lines to and between gasoline, alcohol blended fuel, and oil bulk storage stations, where adequate precautions have been taken to prevent contamination or adulteration of either oil, gasoline or alcohol blended fuel. No distributor or other person shall receive, store or distribute oil as gasoline or alcohol blended fuel nor gasoline as oil or alcohol blended fuel, nor alcohol blended fuel as oil or gasoline nor shall any distributor or other person make a false statement to the commissioner or his successor or any of his employees with reference to products received, stored, sold or delivered by such distributor or other person.

No distributor or other person shall sell or distribute or offer for sale or distribution gasoline and oil, or either, when such gasoline or oil, or either, is mixed, blended, or adulterated in this state in any manner or with any other product. Provided, however, this section shall not be construed to prevent any purchaser of gasoline and oil, or either, to adulterate such products after purchase to meet requirements of his individual uses and purposes, but in no event shall such purchaser sell or distribute such adulterated products, and it is not intended to levy a tax on crude oil produced in this state. Provided further, that blending pumps from which gasoline and lubricating oil are dispensed at the same time into a fuel tank or other container as marine fuel, may be installed by a distributor upon the prior issuance of a permit so to do by the commissioner or his successor, when said pumps shall have been approved by the Underwriter's Laboratories, Inc. Provided further, that nothing in this paragraph shall be construed to prohibit the manufacture of alcohol blended fuel.

Blending of grades of gasoline, additives, and compounds shall be limited to refineries, terminals, and blending pumps, and no person other than those employed at aforesaid facilities shall be permitted to blend any of the above-named products. Provided, however, that gasoline may be blended with alcohol to form alcohol blended fuel at other locations in the State of Mississippi as may be designated and licensed by the commissioner.

Any person guilty of violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00) for the first such offense and not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) for each such offense thereafter, and the penalty shall extend to principal and agent alike.

SOURCES: Codes, 1942, § 5089; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 9; Laws, 1966, ch. 624, § 4; Laws, 1969, Ex Sess, ch. 24, § 5; Laws, 1980, ch. 417, § 4; Laws, 1990, ch. 450, § 7, eff from and after passage (approved March 20, 1990).

Cross References — Regulation of trademarks and labels, see §§ 75-25-1 et seq.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames §§ 75 et seq., 157, 158.

§ 75-55-17. I.C.C. regulations.

No person or carrier, selling or transporting for hire, any gasoline, benzine, naphtha or other highly inflammable substances made from petroleum, shall fail to plainly mark the packages containing the same in accordance with the regulations of the Interstate Commerce Commission.

SOURCES: Codes, 1942, § 5090; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 10.

Cross References — Taxation of interstate carriers of motor vehicle fuels, see §§ 27-61-1 through 27-61-29.

§ 75-55-19. Scales, measuring and dispensing equipment.

No person shall use any scales, measure or measuring device in the handling or sale of petroleum products, unless the same is true and accurate; and the standards of weights and measures shall be those most recently adopted by the Division of Institute of Standards and Technology of the United States Department of Commerce, except that in no event shall gasoline, alcohol blended fuel, diesel fuel, or kerosene be dispensed for sale through visible or bowl pumps with outside indicators, and in no event shall any such bowl be drained by any device except through the regular dispensing hose.

SOURCES: Codes, 1942, § 5091; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 11; Laws, 1966, ch. 624, § 5; Laws, 1980, ch. 417, § 5; Laws, 1990, ch. 450, § 8, eff from and after passage (approved March 20, 1990).

Cross References — Method of sale of commodities under the weights and measures law, see §§ 75-27-39, 75-27-41.
Weights and measures, generally, see § 75-27-1 et seq.

§ 75-55-20. Calibrating equipment to be transferred to Department of Agriculture and Commerce.

Any calibrating equipment in the possession of the State Tax Commission heretofore used by the tax commission to carry out its responsibilities under this chapter shall be transferred by the tax commission to the Department of Agriculture and Commerce on July 1, 1988.

SOURCES: Laws, 1988, ch. 482, § 7, eff from and after July 1, 1988.

Editor's Note — Section 27-3-4 provides that the terms "State Tax Commission" and "tax commission" appearing in the laws of this state shall mean Department of Revenue.

§ 75-55-21. Imitation of tradename.

(1) It shall be unlawful to entice into a service station, store, expose for sale, or sell petroleum products so as to deceive or tend to deceive the purchaser as to the nature, quality or identity of the same by false representation or by substitution, mixing, blending, or adulteration, or by the use of disguised signs, camouflaged or falsely labeled containers, tanks, pumps, or other dispensing equipment, or by imitating the design, symbol, or trade name under which recognized brands of such products are generally marketed.

It is provided, however, that nothing in this chapter shall prevent a person, firm, association, or corporation, or their agents or servants from storing, exposing for sale, or selling any such petroleum products under the trade name, sign, symbol, or distinguishing mark adopted and used by such person, firm, association, or corporation in good faith, if such trade name, sign, symbol, or distinguishing mark is not deceitfully similar to that already in general use by any manufacturer or seller of such products.

(2) Persons claiming to offer for sale gasoline or other petroleum products of a higher standard than any legal or customary standard shall label the container or dispensing equipment completely with reference to the special standard claimed and such label shall constitute a full guaranty that the product sold will meet the standards claimed in every particular.

(3) Any person guilty of violating any of the provisions of this section shall be subject to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) for such offense, or imprisonment not to exceed twelve (12) months, or both, and such person shall be enjoined from selling or distributing gasoline, alcohol blended fuel, diesel fuel, kerosene, or oil, in any manner in this state for a period of not less than one (1) year nor more than five (5) years, and any judge or chancellor now authorized to grant injunctions shall grant an injunction enjoining such person from continuing in the gasoline, alcohol blended fuel, diesel fuel, kerosene, or oil business, as prescribed by this section.

SOURCES: Codes, 1942, § 5092; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 12; Laws, 1966, ch. 624, § 6; Laws, 1969, Ex Sess, ch. 24, § 6; Laws, 1980, ch. 417, § 6; Laws, 2009, ch. 487, § 1, eff from and after July 1, 2009.

JUDICIAL DECISIONS

1. In general.

A contract under which a petroleum product distributor acquired the right to use owner's trademarks in sale of owner's products, but which recognized owner's right to market directly its products within the same trade territory under the same trademarks, was not a void contract in violation of this section [Code 1942, § 5092], because there was no intent on the part of the trademark owner to deceive the public in disposing of its products under the trademark. Humble Oil & Ref. Co. v. Standard Oil Co., 229 F. Supp. 586, 141 U.S.P.Q. 153 (S.D. Miss. 1964), rev'd, 363 F.2d 945, 150 U.S.P.Q. 312 (5th Cir. 1966), cert. denied, 385 U.S. 1007, 87 S. Ct. 714, 17 L. Ed. 2d 545, 152 U.S.P.Q. 844 (1967).

RESEARCH REFERENCES

Am Jur. 74 Am. Jur. 2d, Trademarks and Tradenames § 99 et seq.

§ 75-55-22. Permit authorizing engaging in business as producer of alcohol blended fuel.

Any person located in Mississippi, except the holder of a refiner or a processor's permit, who blends or mixes alcohol blended fuel for sale, delivery, exchange or use in Mississippi shall obtain from the commissioner a permit authorizing him to engage in business as a producer of alcohol blended fuel. Each producer of alcohol blended fuel shall have the necessary equipment to insure a complete and homogeneous mixture. The finished product shall meet all of the state's standards and specifications and shall not be transferred, sold, exchanged, delivered, used or disposed of by any other means until approved by the commissioner and the State Chemist.

All alcohol blended fuel transported or imported into the State of Mississippi shall comply with all specifications and standards adopted by this state for such use.

All gasoline, leaded or unleaded, kept, offered, or exposed for sale, or sold, at retail containing one percent (1%) or more by volume of ethanol, methanol or an ethanol/methanol mixture, shall be identified as "with" or "containing" (or similar wording) "ethanol," "methanol" or "ethanol/methanol" on the upper fifty percent (50%) of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least one-half (½) inch in height, and one-sixteenth (1⁄16) inch stroke (width of type). All letters shall be black with a contrasting background.

All distributors, processors, refiners, and any other persons receiving, storing, selling, distributing or transporting gasoline that contains one percent (1%) by volume or more of methanol, ethanol or other alcohol shall identify the type or chemical name and percentage of such alcohol on any invoice, bill of lading, shipping paper or on any other type of documentation which is used in normal and customary practice in the petroleum industry.

SOURCES: Laws, 1990, ch. 450, § 9; Laws, 1994, ch. 403 § 3, eff from and after passage (approved March 15, 1994).

§ 75-55-23. Administration; right of inspection, access, etc.

The Commissioner of Agriculture and Commerce (the "commissioner") and his agents and employees shall have full access, ingress and egress, at all reasonable hours, to any place or building wherein internal combustion engine fuels, lubricating oils or other like products are stored, transported, sold, offered or exposed for sale. The commissioner and his agents or employees may open for inspection any case, package or other container, tank, pump, tank car, storage tank, stationary engine or tractor, and enter upon any barge, vessel or other vehicle of transportation and, with instruments conforming to the standards of weights and measures most recently adopted by the Division of Institute of Standards and Technology of the United States Department of Commerce, check any measuring device of the volume or weight of contents of any container. Furthermore, the commissioner and his agents or employees may take samples, not exceeding one (1) gallon, for analysis.

Any distributor or other person failing or refusing to permit the commissioner and his agents and employees to exercise any right or authority granted the Mississippi Department of Agriculture and Commerce under the provisions of this section, shall be guilty of a misdemeanor for the first offense, and, upon conviction, shall be punishable by a fine of not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for sixty (60) days, or by both such fine and imprisonment. Any person guilty of a second violation of this section shall, in addition to the other penalty provided herein, be enjoined from continuing in the gasoline, alcohol blended fuel, diesel fuel, kerosene or oil business in this state for a period of not less than one (1) year nor more than five (5) years, and any judge or chancellor now authorized to grant injunctions shall grant an injunction enjoining said distributor or other person from continuing in the gasoline, alcohol blended fuel, diesel fuel, kerosene or oil business for the period prescribed by this section, provided that no injunction shall be issued unless not less than five (5) days' notice is given in the manner prescribed by law.

Any room, house, building, boat, vehicle, structure or place where any petroleum product is received, stored, manufactured, refined, distilled, blended, compounded, sold or distributed in violation of this chapter, and any such petroleum product and all property kept and used in maintaining the same, is hereby declared to be a common nuisance. If such nuisance be found to exist, any judge or chancellor authorized to issue injunctions may issue an injunction, enjoining and restraining the continuance of such nuisance for a period of not less than three (3) months, nor more than one (1) year.

SOURCES: Codes, 1942, § 5093; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 13; Laws, 1966, ch. 624, § 7; Laws, 1969, Ex Sess, ch. 24, § 7; Laws, 1980, ch. 417,

§ 7; Laws, 1986, ch. 395, § 10; Laws, 1988, ch. 482, § 5; Laws, 1990, ch. 450, § 10, eff from and after passage (approved March 20, 1990).

Cross References — Weights and measures, generally, see § 75-27-1 et seq.

Transfer of calibrating equipment to Department of Agriculture and Commerce, see § 75-55-20.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Federal Aspects — United States Bureau of Standards generally, see 15 USCS §§ 203, 271 et seq.

JUDICIAL DECISIONS

1. In general.

Where there were three appellees and decree was affirmed as to recovery by two appellees but was modified as to third appellee, the court in exercise of its discretion could direct that the appellant and third appellee each pay one-half of the costs of appeal. Metropolitan Cas. Ins. Co. v. Koelling, 58 So. 2d 908 (Miss. 1952).

RESEARCH REFERENCES

ALR. Gasoline or other fuel storage tanks as nuisance. 50 A.L.R.3d 209.

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 158 et seq.

§ 75-55-25. Repealed.

Repealed by Laws, 1986, ch. 395, § 29, eff from and after July 1, 1986. [Codes, 1942, § 5094; Laws, 1938, ch. 145; 1946, ch. 263, § 14]

Editor's Note — Former § 75-55-25 pertained to payment for samples.

§ 75-55-27. General requirements.

(1) No retail station pump shall dispense more than one (1) product and station pipelines for gasoline, alcohol blended fuel, diesel fuel, kerosene, fuel oils, or other products shall be entirely separate.

(2) No requirements or provisions of this chapter shall prevent or abridge the use of gasoline, alcohol blended fuel, diesel fuel, kerosene, liquefied compressed gases or other petroleum products for heating or illuminating purposes through the use of special devices approved by the commissioner when not used on a highway.

(3) The provisions of this chapter are not to apply to products unloaded in this state and intended for shipment into another state; provided no portion be offered for sale, and provided further, that all petroleum products so unloaded be reported to the commissioner.

(4) It shall be unlawful for any person to obstruct or hinder in any way the commissioner or his agents in the performance of his duties.

Where self-service pumps and attendant-operated pumps are both operated at the same retail service station, there shall be attached or painted on each such self-service pump or equipment the words "SELF-SERVICE" in letters of not less than one (1) inch in height and not less than seven (7) inches across, on a contrasting background.

SOURCES: Codes, 1942, § 5095; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 15; Laws, 1950, ch. 477, § 3; Laws, 1952, ch. 349; Laws, 1956, ch. 376; Laws, 1966, ch. 624, § 8; Laws, 1969, Ex Sess, ch. 24, § 8; Laws, 1970, ch. 274, § 2; Laws, 1980, ch. 417, § 8; Laws, 1982, ch. 438, § 17; Laws, 1990, ch. 450, § 11, eff from and after passage (approved March 20, 1990).

Cross References — Regulation of liquefied compressed gases, see § 75-57-1.

RESEARCH REFERENCES

ALR. Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations. 46 A.L.R.3d 1393.

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 158 et seq.

§ 75-55-29. Analysis of samples by State Chemist; fees; use of analyses as evidence.

The State Chemist at the Mississippi State University or his assistants provided for herein shall analyze all samples of internal combustion engine fuels, lubricating oils and other like products provided by any person desiring an analysis of said product or provided by the Mississippi Department of Agriculture and Commerce after an inspection. Any person desiring an analysis of a sample of internal combustion engine fuel, lubricating oil or similar products shall pay to the State Chemist the actual cost of such analysis. All funds collected by the State Chemist under the provisions of this chapter shall be paid into a special account to the credit of the Industrial and Agricultural Services Division of the Mississippi State Chemical Laboratory. The cost of analysis of those samples taken by the Mississippi Department of Agriculture and Commerce shall be paid for out of the General Fund, upon appropriation by the Legislature. The certification of such analysis properly certified by affidavit of said chemist or his assistants shall be competent evidence in any court of this state.

SOURCES: Codes, 1942, § 5096; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 16; Laws, 1969, Ex Sess, ch. 24, § 9; Laws, 1986, ch. 395, § 11; Laws, 1988, ch. 482, § 6; Laws, 1990, ch. 450, § 12, eff from and after passage (approved March 20, 1990).

Cross References — Transfer of calibrating equipment to Department of Agriculture and Commerce, see § 75-55-20.

§ 75-55-31. Appeals.

Any person aggrieved by the reasonableness of the limits of tolerance set up by the State Chemist with respect to specifications, or with respect to the method used in, or the accuracy of, any test made by the State Chemist, of any petroleum product, or any substitute therefor, may, within sixty (60) days after such test was made, appeal to the circuit court of any county of this state. The appeal shall be taken by filing with the clerk of the circuit court a declaration stating the test or ruling with respect to which the plaintiff feels aggrieved. In all such cases, it shall be the duty of the Attorney General to defend such appeals.

SOURCES: Codes, 1942, § 5097; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 17; Laws, 1981, ch. 468, § 73; Laws, 1986, ch. 395, § 12, eff from and after July 1, 1986.

§ 75-55-33. Employment of assistant chemists, octane machine operators, and others; purchase of equipment and supplies.

The State Chemist is authorized to employ assistant chemists, octane machine operators, and other employees to assist him in the proper performance of duties assigned him under the provisions of this chapter, or under the provisions of any other law or laws assigned to him for administration. The State Chemist is hereby authorized and directed to purchase such chemical apparatus, machines, and other equipment as may be necessary for performing the tests of all products included in this chapter, and to provide suitable housing for the same at the State Chemical Laboratory, and to purchase from time to time such chemicals and general supplies and equipment as may be necessary for the maintenance of the laboratory in which such tests are carried out.

SOURCES: Codes, 1942, § 5098; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 18; Laws, 1948, ch. 316, § 2; Laws, 1954, ch. 327; Laws, 1966, ch. 624, § 9; Laws, 1969, Ex Sess, ch. 24, § 10; Laws, 1980, ch. 417, § 9; Laws, 1986, ch. 395, § 13; Laws, 1990, ch. 450, § 13, eff from and after passage (approved March 20, 1990).

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Mississippi State Chemical Laboratory, see § 57-21-1 et seq.

State Chemist generally, see § 57-21-1 et seq.

Support of the petroleum products division of the state chemical laboratory with funds authorized in this section, see § 57-27-15.

Weights and measures, generally, see § 75-27-1 et seq.

§ 75-55-35. Repealed.

Repealed by Laws, 1986, ch. 395, § 30, eff from and after July 1, 1986.

[Codes, 1942, § 5099; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 19; Laws, 1970, ch. 260, § 1]

Editor's Note — Former § 75-55-35 required the state chemist to notify the motor vehicle comptroller of test results.

§ 75-55-37. Penalty [Repealed effective July 1, 2020].

(1) The commissioner or his duly appointed representatives shall have the right to request an inspection of any pump, truck, or other equipment, and if upon such inspection any such pump, truck, or other equipment is found to be inaccurate to the extent that a test thereof shows a deficiency of more than twenty-five (25) cubic inches on a five (5) gallon measurement, or if the right to inspect any such pump, truck, or other equipment is refused or denied the commissioner, or his duly authorized representatives, he or they shall have the right to immediately close and lock said pump and other equipment or to seal same with the commissioner's seal. If such pump, truck, or other equipment is found to be inaccurate but the deficiency is twenty-five (25) cubic inches or less on a five (5) gallon measurement, then the commissioner or his representative shall give the owner or operator thereof forty-eight (48) hours within which to correct such inaccuracy and if such person fails or refuses to correct same within said period then the commissioner or his representative shall have the right to lock and seal such pump or other equipment in the same manner as provided above.

It shall be prima facie presumed upon any refusal to allow the right to inspect that the pump, truck, or other equipment sought to be inspected is inaccurate to the extent set forth above, or is operating in violation of this chapter. When any such pump or other equipment is locked or sealed, it may not be unlocked or the seal thereon broken except in the presence of a mechanic or other person called for the purpose of repairing the inaccuracy in the machinery of such pump or other equipment, and such inaccuracy shall be immediately thereafter repaired, and the pump or other equipment properly regulated. The commissioner may, in his discretion, require an affidavit from the mechanic repairing such pump or other equipment, or any other proof which he may deem advisable to the effect that said pump was unlocked or the seal thereon broken in the presence of such mechanic, and that the inaccuracies therein were thereupon completely repaired or regulated.

When a state or factory seal is broken on the measuring adjustment device on a retail pump, it shall be the duty of the station operator to notify the commissioner by United States mail, within twenty-four (24) hours, after the breaking of said seal. After the commissioner has received written notice as herein provided and he or his agent has resealed the measuring adjustment device on the pump or pumps at this station, it shall be unlawful for the owner or operator of the station or any of his employees to break a state or factory seal on the measuring adjustment device on any pump at the station during the ensuing ninety (90) days without the prior approval of the commissioner or his agent.

The State of Mississippi shall have a lien on all pumps, trucks, and other equipment used by any distributor, or other person, in the operation of his business for any tax or penalty due the State of Mississippi because of any violation of this chapter. Such lien shall be paramount to any and all private liens and all the provisions set out in Chapter 7, Title 85, Mississippi Code of

1972, shall be applicable herein for the purpose of securing the enforcement of said lien, and particularly the right to secure the issuance of a writ of summons and seizure and proceedings had and done after the issuance of said writ shall be applicable. Provided, however, that the commissioner shall not be required to give any bond in any such case.

Any person or officer, agent or employee thereof who shall violate any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Hundred Dollars ($100.00) for the first offense and not less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) for each subsequent offense or imprisonment in the county jail for a period not to exceed ninety (90) days or both.

(2) If a person who, by himself, by his agent, or as the servant or agent of another person commits a violation of this chapter, the commissioner or his designee may impose any, all or a combination of the following penalties:

(a) A stop sale order for any engine fuel, nonengine fuel, automotive lubricant or any other petroleum product not in compliance with this chapter. A remand of the stop sale order may be issued if the engine fuel, nonengine fuel, automotive lubricant or petroleum product is brought into full compliance with this chapter. The stop sale order may be appealed to the commissioner or his designee within twenty (20) days from the receipt of the order.

(b) A warning letter for violations of this chapter.

(c) A civil penalty of not more than Three Thousand Dollars ($3,000.00) per violation. A person may request an administrative hearing within thirty (30) days of receipt of the notice of the penalty. The commissioner or his designee shall conduct a hearing after giving reasonable notice to the person. The decision may be appealed to the Circuit Court of the First Judicial District of Hinds County.

(3) If the person has exhausted his administrative appeals, he shall pay the civil penalty within thirty (30) days after the effective date of the final decision. If the person fails to pay the penalty, the commissioner may bring a civil action in any court of competent jurisdiction to recover the penalty.

(4) The commissioner is authorized to suspend, revoke and/or permanently deny a registration under the Petroleum Products Inspection Law of Mississippi to any person, firm, corporation or other organization determined to be guilty of two (2) or more violations per location, per year, of the Petroleum Products Inspection Law of Mississippi and the rules and regulations in force pursuant thereto.

(5) In lieu of, or in addition to, the penalties provided above, the commissioner and the State Chemist shall have the power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of the Petroleum Products Inspection Law of Mississippi and the rules and regulations in force pursuant thereto, in the appropriate circuit, chancery, county or justice court in which venue may lie. The commissioner and the State Chemist may obtain mandatory or prohibitory injunctive relief, whether temporary or permanent, and it shall not

be necessary for the state to post a bond or prove that no adequate remedy is available at law.

(6) All penalties assessed by the commissioner under this section shall be deposited in the State General Fund.

(7) This section shall stand repealed on July 1, 2020.

SOURCES: Codes, 1942, § 5100; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 20; Laws, 1948, ch. 316, § 3; Laws, 1950, ch. 477, § 4; Laws, 1958, ch. 184; Laws, 1969, Ex Sess, ch. 24, § 11; Laws, 1990, ch. 450, § 14; Laws, 1993, ch. 459, § 1; Laws, 2010, ch. 397, § 2; Laws, 2013, ch. 372, § 2; Laws, 2016, ch. 402, § 2, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment extended the repealer for the section by substituting "July 1, 2020" for "July 1, 2016" in (7).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

A cause of action for violation of former enactment of this statute (Code 1930, § 4783) is not stated by a declaration which fails to allege that defendant mixed, substituted, or adulterated kerosene sold by his principal or knew that it was below the required flash point. Perry v. Standard Oil Co., 15 F. Supp. 563 (S.D. Miss. 1936).

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 370 et seq.

§ 75-55-38. License for petroleum equipment repairmen; fees; penalties for violation of licensing provisions.

(1) Any person who repairs, adjusts or removes an official seal from a petroleum pump or metering device shall, before engaging in such activity, obtain a license from the commissioner upon showing that he is qualified to repair, adjust and test petroleum pumps and/or metering devices. Application for a petroleum equipment repairman's license shall be made annually on forms prescribed and furnished by the commissioner. A fee of Fifty Dollars ($50.00) shall be paid by the applicant at the time application for such license is made. All licenses issued hereunder shall expire on the thirtieth day of June next after its issuance. Any person so licensed shall, within three (3) days after he repairs or adjusts a petroleum pump, metering or measuring device or removes an official seal therefrom, make a report thereof to the commissioner on a form provided for such purpose by the Department of Agriculture and Commerce.

(2) Upon receipt of a license, the petroleum equipment repairman shall acquire a seal press, one (1) die of which shall be inscribed with his license number. All official pump or meter seals removed by the licensed petroleum equipment repairman shall be replaced and such replaced seals shall clearly

show the license number of the petroleum equipment repairman replacing the seal(s).

(3) The commissioner shall have authority to prescribe and adopt regulations establishing additional requirements and/or qualifications for petroleum equipment repairmen.

(4) Any person, company or corporation who violates or causes to be violated any provision of this section or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not less than Three Hundred Dollars ($300.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not more than six (6) months, or by both fine and imprisonment; upon a second or subsequent conviction thereof, violators shall be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than one (1) year, or by both fine and imprisonment. In addition to fines and/or imprisonment as provided herein, the commissioner may, in his discretion, suspend or revoke the license of such petroleum equipment repairman. Provided, however, that the commissioner shall afford a licensee an opportunity for a hearing, prior to suspension or revocation of a license, to show cause why his license should not be suspended or revoked.

SOURCES: Laws, 1989, ch. 379, § 1; Laws, 1990, ch. 450, § 15, eff from and after passage (approved March 20, 1990).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-55-39. Repealed.

Repealed by Laws 1981, ch. 468, § 74, eff from and after July 1, 1981.
[Codes, 1942, § 5101; Laws, 1938, ch. 145; 1946, ch. 263, § 21]

Editor's Note — Former § 75-55-39 authorized the motor vehicle comptroller to employ field men and other employees to administer Chapter 55.

§ 75-55-40. Severability provisions.

If any section, subsection, paragraph, sentence, clause or provision of Chapter 450, Laws of 1990, shall become invalid by order of any court of competent jurisdiction, the same shall not affect the validity of any other section, subsection, paragraph, sentence, clause or provision thereof.

SOURCES: Laws, 1990, ch. 450, § 16, eff from and after passage (approved March 20, 1990).

§ 75-55-41. Application of testing methods.

The testing methods of Chapter 450, Laws of 1990, are meant for referee purposes only and manufacturers shall not be limited by the testing methods provided herein.

SOURCES: Laws, 1990, ch. 450, § 17, eff from and after passage (approved March 20, 1990).

CHAPTER 56

Antifreeze and Summer Coolants

Sec.	
75-56-1.	Short title.
75-56-3.	Definitions.
75-56-5.	Administration of chapter.
75-56-7.	Administration of chapter; specifications; inspections; enforcement.
75-56-9.	Registration; specimens; documentation of claims; certificate of registration; cancellation; hearing.
75-56-11.	Adulteration.
75-56-13.	Misbranding.
75-56-15.	Examination of samples; access to manufacturing and distribution facilities; report of results.
75-56-17.	Specifications.
75-56-19.	Prohibited acts.
75-56-21.	"Stop sale" and "withdrawal from distribution" orders; condemnation and confiscation; evidentiary use of analysis; request for distribution data.
75-56-23.	When enforcement not required.
75-56-25.	Furnishing statement of formulae or other suitable evidence; confidentiality requirements.
75-56-27.	Penalties.

§ 75-56-1. Short title.

This chapter shall be known as the "Mississippi Antifreeze Law of 1978."

SOURCES: Laws, 1978, ch. 359, § 1, eff from and after July 1, 1978.

§ 75-56-3. Definitions.

The following words and phrases have the following meanings respectively ascribed to them in this section, unless the context clearly describes and indicates a different meaning:

(a) "Commissioner" means the Commissioner of the Mississippi Department of Agriculture and Commerce, his agents or employees.

(b) "State Chemist" means the Director of the Mississippi State Chemical Laboratory or his agents and employees.

(c) "Antifreeze" or "engine coolant" means any substance or preparation intended to be diluted before use as the cooling medium in the cooling system of an automotive internal combustion engine to provide protection against freezing, overheating and corrosion of the cooling system, or any product intended to be diluted before use which is labeled to indicate or imply that it will prevent freezing or overheating of the cooling system of an automotive internal combustion engine. Unless otherwise stated, these terms include the terms "antifreeze-coolant," "antifreeze and summer coolant" and "summer coolant."

(d) "Prediluted antifreeze" or "prediluted engine coolant" means any substance or preparation intended for use full strength as a cooling medium in the cooling system of an automotive internal combustion engine to provide protection against freezing, overheating and corrosion of the cooling system or any substance or preparation intended for use full strength which is labeled to indicate or imply that it will prevent overheating or freezing of the cooling system of an automotive internal combustion engine.

(e) "Person" means any individual, partnership, association, firm, company or corporation.

(f) "Distribute" means to hold with intent to sell, offer for sale, to sell, barter or otherwise supply to the consumer.

(g) "Package" means a sealed retail package, drum or other container designed for the sale of antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant directly to the consumer, or a container from which the antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant may be installed directly by the seller into the cooling system, but does not include shipping containers containing properly labeled inner containers.

(h) "Label" means any display of written, printed or graphic matter on, or attached to, a package, or to the outside individual container or wrapper of the package of any product referred to in this chapter. Any display required on a container by this chapter shall be legible with conspicuous type upon a contrasting background.

(i) "Labeling" means the labels and any other written, printed or graphic matter accompanying a package of any product referred to in this chapter.

SOURCES: Laws, 1978, ch. 359, § 3; Laws, 1998, ch. 488, § 1, eff from and after July 1, 1998.

Cross References — State chemist generally, see § 57-21-1 et seq.
Definition of adulterated, see § 75-56-11.
Definition of misbranded, see § 75-56-13.

§ 75-56-5. Administration of chapter.

This chapter shall be administered by the State Chemist and the commissioner. The State Chemist or his designated employees shall establish specifications for antifreezes and engine coolants and prediluted antifreezes and prediluted engine coolants sold or offered for sale in the state as described in Section 75-56-17 and shall register antifreezes and engine coolants and prediluted antifreezes and prediluted engine coolants sold or offered for sale in the state as described in Section 75-56-9. The commissioner or his designated employees shall inspect and sample antifreezes and engine coolants and prediluted antifreezes and prediluted engine coolants sold or offered for sale in the state and the State Chemist or his designated employees shall analyze antifreezes and engine coolants and prediluted antifreezes and prediluted engine coolants sold or offered for sale in the state as described in Section 75-56-15. The commissioner or his designated employees shall enforce Section 75-56-21 and Section 75-56-23 as described in those sections.

SOURCES: Laws, 1978, ch. 359, § 2; Laws, 1986, ch. 395, § 18; Laws, 1988, ch. 482, § 8; Laws, 1998, ch. 488, § 2, eff from and after July 1, 1998.

Cross References — State Chemist; generally, see § 57-21-1 et seq.

Department of Agriculture and Commerce, generally, see §§ 69-1-1 et seq.

Copy of analysis made by Mississippi State Chemical Laboratory of antifreeze or engine coolant certified by State chemist administered as evidence in any court in state, see § 75-56-21.

State chemist may require applicant to furnish statement of formulae if required for analysis, see § 75-56-25.

§ 75-56-7. Administration of chapter; specifications; inspections; enforcement.

(1) The State Chemist and the commissioner, following the terms of the Mississippi Administrative Procedures Act, may make and adopt such reasonable rules, regulations and standards of antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant strength, properties and nomenclature as may be necessary in order to secure the efficient administration of this chapter.

(2) It is desirable that there should be uniformity between the requirements of the several states. Therefore, the State Chemist and the commissioner are directed, consistent with the purposes of this chapter, to so enforce this chapter as to achieve such uniformity and are also authorized and empowered to cooperate with and enter into agreements with any other agency of this state, or any other state regulating antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant, for the purpose of carrying out the provisions of this chapter and securing uniformity of regulations in conformity to the primary standards established by this chapter.

SOURCES: Laws, 1978, ch. 359, § 7; Laws, 1986, ch. 395, § 19; Laws, 1988, ch. 482, § 9; Laws, 1998, ch. 488, § 3, eff from and after July 1, 1998.

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Cross References — Mississippi Administrative Procedures Law, see § 25-43-1.101 et seq.

§ 75-56-9. Registration; specimens; documentation of claims; certificate of registration; cancellation; hearing.

On or before the first day of July of each year, and before any antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant, may be distributed, for the permit year beginning July 1, the manufacturer, packager or person whose name appears on the label shall make application to the State Chemist on forms provided by the latter for registration for each brand of antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant, which he desires to distribute. The application shall be accompanied by specimens or facsimiles of labeling for all container sizes of each brand to be distributed, and by a properly labeled sample of the product. The State

Chemist or his designated employees shall inspect, test or analyze the product and review the labeling. Upon request of the State Chemist or his designated employees, any registrant or his representative shall provide documentation of any claim made upon the label or labeling for any of his products regulated by this chapter and sold or offered for sale in the state. If the product is not adulterated or misbranded, if it meets the standards established by this chapter and if the product is not in violation of this chapter, the State Chemist or his designated employees shall issue a certificate of registration authorizing the distribution of such product in this state for the permit year. If the product is adulterated or misbranded, if it fails to meet the standards established by this chapter or if it is in violation of this chapter, the State Chemist or his designated employees shall refuse to register the product and shall return the application to the applicant stating how the product or labeling is not in conformity. If the State Chemist or his designated employees shall, at a later date, find that a properly registered antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant has been materially altered or adulterated, or a change has been made in the name, brand or trademark under which the product is sold, or that it violates the provisions of this chapter, he shall notify the applicant that the license authorizing sale of the product is canceled. No antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant license shall be canceled unless the registrant shall have been given an opportunity for a hearing before the State Chemist to modify his application in order to comply with the requirements of this chapter.

SOURCES: Laws, 1978, ch. 359, § 4; Laws, 1986, ch. 395, § 20; Laws, 1988, ch. 482, § 10; Laws, 1998, ch. 488, § 4, eff from and after July 1, 1998.

Cross References — Definition of adulterated, see § 75-56-11.

Definition of misbranded, see § 75-56-13.

Prohibition against distribution of antifreeze which has not been registered in accordance with this section, see § 75-56-19.

§ 75-56-11. Adulteration.

Antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant shall be deemed to be adulterated:

(a) If, in the form in which it is sold and directed to be used, it would be injurious to the cooling system in which it is installed, or if, when used in such cooling system, it would make the operation of the engine dangerous to the user.

(b) If its strength, quality or purity falls below the standard of strength, quality or purity under which it is sold or offered for sale.

SOURCES: Laws, 1978, ch. 359, § 5; Laws, 1998, ch. 488, § 5, eff from and after July 1, 1998.

§ 75-56-13. Misbranding.

Antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant shall be deemed to be misbranded:

(a) If it does not bear a label which:

(i) Specifies the brand name of the product, the principal ingredient and the intended use of the product;

(ii) States the name and place of business of the registrant or person for whom registered;

(iii) States the net quantity of contents (in terms of liquid measure) separately and accurately in a uniform location upon the principal display panel; and

(iv) Contains a statement warning of any hazard of substantial injury to human beings which may result from the intended use or reasonable foreseeable misuse of the product as provided by applicable federal and state product safety laws.

(b) If the label on an undiluted product in a container of less than five (5) gallons, or the labeling for a container of five (5) gallons or more, does not contain a statement or chart showing the appropriate amount, percentage, proportion or concentration of the product to be used to provide (i) claimed protection from freezing at a specified degree or degrees of temperature, (ii) claimed protection from corrosion, or (iii) claimed increase of boiling point or protection from overheating.

(c) If the principal ingredient is propylene glycol and the container does not bear a statement on the label not to use a conventional coolant hydrometer for propylene glycol coolants.

(d) If its labeling contains any claim that it has been approved or recommended by the State Chemist.

(e) If its labeling is false, deceptive or misleading.

SOURCES: Laws, 1978, ch. 359, § 6; Laws, 1986, ch. 395, § 21; Laws, 1998, ch. 488, § 6, eff from and after July 1, 1998.

Cross References — State chemist to register antifreezes and engine coolants sold or offered for sale as described in this section, see § 75-56-5.

Prohibition against distribution of antifreeze in packages not bearing the information required by this section, see § 75-56-19.

§ 75-56-15. Examination of samples; access to manufacturing and distribution facilities; report of results.

The commissioner or his designated employees shall have access at reasonable hours, and upon reasonable notice, to all places and property where antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant is manufactured, stored, transported, distributed, offered or intended to be offered for sale, including the right to inspect and examine all antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant there found and to take reasonable samples of such antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant for analysis together with specimens of labeling. All samples so taken shall be properly sealed and sent to the State Chemist for examination, together with all labeling appertaining thereto. It shall be the duty of the State Chemist or his designated employees to examine promptly all samples received in connection with the administration and enforcement of this chapter and to report the results of such examination to the commissioner or his designated employees.

SOURCES: Laws, 1978, ch. 359, § 8(1); Laws, 1986, ch. 395, § 22; Laws, 1998, ch. 488, § 7, eff from and after July 1, 1998.

Cross References — Commissioner to inspect and sample and state chemist to analyze antifreezes and engine coolants sold or offered for sale as described in this section, see § 75-56-5.

Unlawful to refuse to permit entry, inspection or acquisition of sample of antifreeze or engine coolant as authorized by this section, see § 75-56-19.

§ 75-56-17. Specifications.

Antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant shall not contain visually identifiable suspended matter or sediment after mixing with the proper amount of water for use in an automotive internal combustion engine. The specifications for antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant shall not fall below the minimum specifications, if any, established by the American Society for Testing and Materials as described in the following for the type:

(a) Ethylene glycol base antifreeze or engine coolant for automobiles and light duty service shall meet specifications in the current version of American Society for Testing and Materials D 3306, Standard Specification for Ethylene Glycol Base Engine Coolant for Automobile and Light Duty Service.

(b) Propylene glycol base antifreeze or engine coolant for automobile and light duty service shall meet the specifications in the current version of American Society for Testing and Materials D 5216, Standard Specification for Propylene Glycol Base Engine Coolant for Automobile and Light Duty Service.

(c) Low silicate ethylene glycol base antifreeze or engine coolant for heavy duty automotive engines requiring an initial charge of supplemental coolant additive (SCA) shall meet the specifications in the current version of the American Society for the Testing and Materials D 4985, Low Silicate Ethylene Glycol Base Engine Coolant for Heavy Duty Engines Requiring an Initial Charge of Supplemental Coolant Additive (SCA).

(d) Prediluted antifreeze or prediluted engine coolant shall meet the specifications in the current version of the American Society for Testing and Materials D 4656, "Prediluted Ethylene Glycol Base Engine Coolant for automobiles and Light Duty Service."

(e) The intent of this chapter is that requirements shall be kept current with subsequent amendments and editions of ASTM D 3306, D 5216, and D 4985 and D 4656.

(f) Other antifreeze or engine coolant including, but not limited to, prediluted antifreeze or engine coolant for automobiles and light duty service, recycled antifreeze or engine coolant for automobiles and light duty service, and recycled antifreeze of engine coolant for heavy duty automotive engines requiring an initial charge of supplemental coolant additive may be approved for registration by the State Chemist or his designated employees following submission of the label or labeling and a sample of the product as described in Section 75-56-9. These products shall meet the specifications in the current version of the applicable ASTM standard specifications, if any.

(g) Materials such as methyl, ethyl or isopropyl alcohols, chemical salts, hydrocarbon-based compounds and sugars shall not be sold or offered for sale as antifreezes or engine coolants or prediluted antifreezes or prediluted engine coolants for automotive engines.

SOURCES: Laws, 1978, ch. 359, § 8(2), (3), (4); Laws, 1986, ch. 395, § 23; Laws, 1988, ch. 482, § 11, eff from and after July 1, 1988; Laws, 1992, ch. 396 § 6; Laws, 1998, ch. 488, § 8, eff from and after July 1, 1998.

Cross References — State chemist to establish specifications for antifreezes and engine coolants sold or offered for sale as described in this section, see § 75-56-5.

§ 75-56-19. Prohibited acts.

It shall be unlawful to:

(a) Distribute any antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant which has not been registered in accordance with Section 75-56-9 or whose labeling is different from that accepted for registration, provided that registration is not required for the orderly disposal within a reasonable period of stocks of discontinued brands of antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant not adulterated or otherwise misbranded, which were properly registered in the immediately preceding registration period.

(b) Distribute any antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant which is adulterated or misbranded.

(c) Refuse to permit entry, inspection or the acquisition of a sample of the antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant as authorized by Section 75-56-15.

(d) Dispose of any antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant that is under "withdrawal from distribution" order in accordance with Section 75-56-21.

(e) Distribute any antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant unless it is in the registrant's or manufacturer's unbroken package or is installed by the seller in the cooling system of the purchaser's vehicle directly from the registrant's or manufacturer's package, and the label on such package, if less than five (5) gallons, or the labeling of such package if five (5) gallons or more, does not bear the information required by Section 75-56-13; provided, that the Commissioner of Agriculture and Commerce and the State Chemist may by regulation establish labeling and other reasonable requirements for the sale of a properly registered antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant from a bulk container into a container supplied by or for the purchaser.

(f) Refill any container bearing a registered label, other than a customer's container, without first obtaining permission from the registrant.

(g) Refuse, when requested, to permit a purchaser to see the container from which antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant is drawn for installation into the purchaser's vehicle.

(h) Distribute any antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant not in compliance with the Federal Hazardous Substances Act and Poison Prevention Packaging Act and their respective regulations.

SOURCES: Laws, 1978, ch. 359, § 9; Laws, 1986, ch. 395, § 24; Laws, 1988, ch. 482, § 12; Laws, 1998, ch. 488, § 9, eff from and after July 1, 1998.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (c) by substituting "the acquisition of a sample" for "the acquisition or a sample." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Disposition of antifreeze which is not in compliance with this section, see § 75-56-21.

Federal Aspects — Poison Prevention Packaging Act, see 15 USCS §§ 1261, 1471-1476, and 21 USCS §§ 343, 352, 353, and 362.

Federal Hazardous Substances Act, see 15 USCS §§ 1261-1273.

§ 75-56-21. "Stop sale" and "withdrawal from distribution" orders; condemnation and confiscation; evidentiary use of analysis; request for distribution data.

(1) When the Commissioner of Agriculture and Commerce finds any antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant being distributed in violation of Section 75-56-19 of this chapter, or of any of the rules and prescribed regulations duly promulgated and adopted under this chapter, he may issue and enforce a written or printed "stop sale" or "withdrawal from distribution" order, warning the distributor not to dispose of any of the lot of antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant in any manner until written permission is given by the commissioner or the court. Copies of such orders shall also be sent by registered mail to the registrant and to the person whose name and address appears on the labeling of the antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant. The commissioner shall release for distribution the lot of antifreeze or engine coolant or prediluted antifreeze or

prediluted engine coolant so withdrawn when said Section 75-56-19 and applicable rules and regulations have been complied with. If compliance is not obtained within thirty (30) days, the commissioner may begin proceedings for condemnation.

(2) Any lot of antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant not in compliance with such provisions and regulations shall be subject to seizure upon complaint of the commissioner to the district court in the county in which the product is located. In the event the court finds the product to be in violation of this chapter, it may then order the condemnation of the product and the product shall be disposed of in any manner consistent with the rules and regulations of the Department of Agriculture and Commerce and the laws and regulations of the federal and state governments at the expense of the claimants thereof; however, in no instance shall the disposition of the product be ordered by the court without first giving thirty (30) days' notice, by registered mail at his last known address, to the owner of same, if he is known to the commissioner and to the registrant, if the product is registered, at the address shown on the label or on the registration certificate, so that such persons may apply to the court for the release of the product or for permission to process or relabel the product so as to bring it into compliance with this chapter.

(3) A copy of the analysis made by the Mississippi State Chemical Laboratory of any antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant certified by the State Chemist shall be administered as evidence in any court of the state on trial of any issue involving the merits of antifreeze or engine coolant as defined and covered by this chapter.

(4) When the commissioner finds any antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant being distributed in violation of any of the provisions of this chapter, he may request, and the person who is primarily responsible for the product must promptly supply to him, the distribution data for such product in this state, so as to assure that violative products are not further distributed herein and that an orderly withdrawal from distribution may be attained where necessary to protect the public interest.

SOURCES: Laws, 1978, ch. 359, § 10(1), (2); Laws, 1986, ch. 395, § 25; Laws, 1988, ch. 482, § 13; Laws, 1998, ch. 488, § 10, eff from and after July 1, 1998.

Cross References — Commissioner to enforce this section as provided herein, see § 75-56-5.

Prohibition against disposal of antifreeze that is subject to "withdrawal from distribution" order pursuant to this section, see § 75-56-19.

§ 75-56-23. When enforcement not required.

Nothing in this chapter shall be construed as requiring the commissioner to report for prosecution or for institution of libel proceedings, minor violations of the chapter whenever he believes that the public interest will be best served by a suitable notice of warning in writing to the registrant or the person whose name and address appears on the label.

SOURCES: Laws, 1978, ch. 359, § 10(3); Laws, 1986, ch. 395, § 26; Laws, 1998, ch. 488, § 11, eff from and after July 1, 1998.

Cross References — Commissioner to enforce this section as provided herein, see § 75-56-5.

§ 75-56-25. Furnishing statement of formulae or other suitable evidence; confidentiality requirements.

The State Chemist may, if required for the analysis of antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant for the purposes of registration, require the applicant to furnish a statement of the formula of such product, unless the applicant can furnish other satisfactory evidence that such product is not adulterated or misbranded. Such statement shall state the content of inhibitor ingredients in generic terms if such inhibitor ingredients total less than five percent (5%) by weight of the antifreeze or engine coolant or prediluted antifreeze or prediluted engine coolant. In lieu of a detailed product description, the State Chemist may allow the registrant to furnish other evidence which satisfactorily meets his requirements. All statements pertaining to the formula furnished under this section shall be privileged and confidential and shall not be made public or open to the inspection of any person, firm, association or corporation other than the enforcement agency. No such statement shall be subject to subpoena nor shall the same be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal unless with the consent of the applicant furnishing such statement to the State Chemist. The disclosure of any such information, except as provided in this section, shall constitute a misdemeanor.

SOURCES: Laws, 1978, ch. 359, § 11; Laws, 1986, ch. 395, § 27; Laws, 1998, ch. 488, § 12, eff from and after July 1, 1998.

Cross References — State chemist to analyze antifreeze and engine coolants sold or offered for sale as described in § 75-56-15, see § 75-56-5.

§ 75-56-27. Penalties.

Any person found by the commissioner or the State Chemist to be in violation of any provision of this chapter may be assessed a penalty as provided in Section 75-55-37. In addition to or in lieu of such penalties, the commissioner may suspend or revoke the permit or license of such person issued under terms of this chapter. The commissioner shall notify such person of such action in writing delivered by first class United States Mail. Such person shall have fifteen (15) days after the notice is mailed within which to request in writing a hearing before the commissioner or his designee for the purpose of deciding whether or not the penalty imposed should be allowed to stand. The commissioner may issue subpoenas to compel the attendance of witnesses or the production of documents or physical evidence, administer oaths and hear testimony.

If such person does not deliver the written request for a hearing within such time to the commissioner, the commissioner's original decision shall be final. An appeal, if taken, must be perfected within thirty (30) days after the decision of the commissioner with the circuit court of the county of the residence of the accused. If such person is a nonresident of the State of Mississippi, the case shall be appealed to the Circuit Court of the First Judicial District of Hinds County, Mississippi. If any penalty imposed by the commissioner is not paid within thirty (30) days of becoming final, the commissioner may take appropriate legal action to collect such penalty and the court shall award the commissioner reasonable attorney's fees and court costs to collect the penalty. The commissioner may adopt such rules and regulations as may be necessary or desirable to carry out the provisions of this chapter.

SOURCES: Laws, 1978, ch. 359, § 12; Laws, 1998, ch. 488, § 13, eff from and after July 1, 1998.

CHAPTER 57

Liquefied Petroleum Gases

In General 75-57-1
State Liquefied Compressed Gas Board 75-57-101

IN GENERAL

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75-57-47. Installation of systems, etc.; inspection; correction of installations, etc.; certificates and permits; remedies for violations.
75-57-49. Permitee requirements; proof of financial responsibility; issuance and duration of permits.
75-57-51. Repealed.
75-57-53. Repealed.
75-57-55. Repealed.
75-57-57. Sanctions and remedies for failure to obtain permit.
75-57-59. Repealed.
75-57-61. Minimum storage requirements and facilities for nonresident distributors.
75-57-63. Unlawful trust and combine; impeding competition or monopolizing sales of liquefied petroleum gases or liquefied petroleum gas appliances.

§ 75-57-1. Title.

Sections 75-57-1 through 75-57-63 shall be known as the “Liquefied Compressed Gas Equipment Inspection Law of Mississippi.”

SOURCES: Codes, 1942, § 5104-01; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 1; Laws, 1948, ch. 317, § 1.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation made a stylistic correction in this section by substituting "Sections 75-57-1 through 75-57-63" for "This chapter." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Liquefied compressed gas tax, see § 27-59-1 et seq.

Privilege taxes on liquefied compressed gas, see § 27-59-1 et seq.

Petroleum Products Inspection Law, see § 75-55-1 et seq.

RESEARCH REFERENCES

ALR. Liability of one selling or distributing liquid or bottled fuel gas, for personal injury, death, or property damage. 41 A.L.R.3d 782.

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 158 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Electricity, Gas, and Steam, Forms 60, 61 (complaints in federal court involving manufacturer of bottled liquefied petroleum gas).

14 Am. Jur. Trials, Liquefied Petroleum (LP) Gas Fires and Explosions, 343.

CJS. 15 C.J.S., Commerce § 48.

§ 75-57-2. Transfer of administration of Liquefied Compressed Gas Equipment Inspection Law.

The administration of the Liquefied Compressed Gas Equipment Inspection Law of Mississippi (Sections 75-57-1 through 75-57-63) are transferred from the Chairman of the State Tax Commission to the Commissioner of Insurance. All personnel, records, property and equipment allocated to the Chairman of the State Tax Commission exclusively for the administration of the Liquefied Compressed Gas Equipment Inspection Law of Mississippi are hereby transferred to and placed under the supervision and control of the Commissioner of Insurance.

SOURCES: Laws, 1982, ch. 408, § 1; Laws, 1995, ch. 475, § 11, eff from and after July 1, 1995.

Editor's Note — Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

Cross References — Commissioner of insurance generally, see § 83-1-3.

§ 75-57-3. General powers and duties of Commissioner of Insurance.

The Commissioner of Insurance is vested with the sole and exclusive power and authority and is charged with the duty of administering this chapter, and the State Liquefied Compressed Gas Board shall have the authority to establish and enforce reasonable rules and regulations, not inconsistent with the provisions hereof, for the purpose of carrying out the provisions of this chapter. For the purpose of administering the provisions hereof, the Commissioner of Insurance is empowered to employ such field inspectors as are necessary to the proper discharge of his duties under this chapter. The Commissioner of Insurance and his agents and employees shall have full access, ingress and egress, at all reasonable hours, to any of the premises or buildings where liquefied compressed gases may be received, stored, transported, sold, offered or exposed for sale, manufactured, refined, distilled, compounded or blended. The Commissioner of Insurance and his agents and employees shall have the right to check and inspect any liquefied compressed gas container, system, pump, equipment, tank car, storage tank, or vehicle in which any liquefied compressed gas is present, or it has reason to believe it present, and the Commissioner of Insurance and his agents and employees shall have the authority to take therefrom samples not exceeding one (1) gallon for analysis. The Commissioner of Insurance and his agents and employees shall have full authority to inspect any vehicle, equipment or system where it has reason to believe that the vehicle, equipment or system operates by the use of, or is equipped to operate by the use of, liquefied compressed gases.

SOURCES: Codes, 1942, § 5104-02; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 2; Laws, 1948, ch. 317, § 2; Laws, 1963, 1st Ex Sess, ch. 24; Laws, 1964, ch. 237, § 1; Laws, 1980, ch. 561, § 26; Laws, 1982, ch. 408, § 2; Laws, 1995, ch. 475, § 12, eff from and after July 1, 1995.

Cross References — Deposit of certain proceeds from liquified compressed gas tax into special fund for administration of Liquified Compressed Gas Equipment Inspection Law, see § 27-59-49.

Administration of the petroleum products inspection law, see § 75-55-3.

Inspection of liquefied compressed gas systems by field inspectors, see § 75-57-47.

State Liquefied Compressed Gas Board creation, powers and duties, etc., see § 75-57-101.

JUDICIAL DECISIONS

1. In general.

In an action for personal injuries sustained by a truck driver as a result of a liquefied petroleum gas explosion, the trial court did not err in excluding as evidence a printed pamphlet purporting to contain the rules and regulations of the Motor Vehicle Comptroller where the pamphlet was not properly authenticated, but the rules and regulations of the Motor Vehicle Comptroller, had they been properly authenticated, would have been admissible in evidence. Jenkins v. Cogan, 238 Miss. 543, 119 So. 2d 363 (1960).

In an action for personal injuries sustained by a truck driver as the result of a liquefied petroleum gas explosion allegedly caused by the negligence of defendant's employee, who was not a licensed and qualified installer and repairer of liquefied petroleum systems, in undertaking to remove from the saddle tank on a propane propelled truck a vapor return valve and install a new one thereon, evidence, although conflicting, sustained a jury verdict for plaintiff. Jenkins v. Cogan, 238 Miss. 543, 119 So. 2d 363 (1960).

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 144 et seq.

§ 75-57-5. Definitions.

Unless the context otherwise requires, the definitions which follow govern the construction and meanings of the terms used in this chapter:

(a) "Liquefied compressed gas" means both liquefied petroleum gas and anhydrous ammonia when the latter is used exclusively for commercial fertilizer.

(b) "Liquefied petroleum gas" means any material having a vapor pressure not exceeding that allowed for commercial propane, composed predominantly of the following hydrocarbons, either by themselves or as mixtures: propane, propylene, butane (normal butane or isobutane) and butylene (including isomers).

(c) "Natural gas and compressed natural gas" means any gaseous mixture containing primarily methane.

(d) "Anhydrous ammonia" means the compound formed by the combination of the two (2) gaseous elements, nitrogen and hydrogen, in the proportions of one (1) part of nitrogen to three (3) parts of hydrogen by volume. Anhydrous ammonia is ammonia gas in compressed and liquefied forms. It is not to be confused with aqueous ammonia, which is a solution of ammonia gas in water.

Both liquefied petroleum gas and anhydrous ammonia are gaseous at normal atmospheric temperatures and pressures but are readily liquefiable by the application of moderate pressures.

(e) "Natural gas carburetion system" means any compressed natural gas carburetion system.

(f) "Natural gas fueling system" means an assembly consisting of compressors, containers, piping and other delivery devices for the purpose of compressing natural gas for use as a fuel in a motor vehicle and thereafter storing and/or dispensing the compressed natural gas for such use.

(g) "Installer" means any person who has satisfactorily passed an examination under the supervision of the Commissioner of Insurance testing his knowledge and ability to install or repair properly domestic systems, industrial systems, liquefied petroleum gas carburetion systems, natural gas carburetion systems, bulk plant systems, standby plant systems, anhydrous ammonia systems, or other similar systems and who holds an installer's certificate as provided in this chapter.

(h) "Container" means any vessel, including cylinders, tanks, portable tanks and cargo tanks, used for the transporting or storing of the liquefied compressed gases or compressed natural gas, except containers which are subject to inspection under federal laws or regulations.

(i) "Compressed gas" means any material or mixture having in the container an absolute pressure exceeding forty (40) pounds per square inch absolute at seventy (70) degrees Fahrenheit or, regardless of the pressure, at seventy (70) degrees Fahrenheit, having an absolute pressure exceeding one hundred four (104) pounds per square inch absolute at one hundred thirty (130) degrees Fahrenheit.

(j) "Flammable liquid" means any liquid having a closed cup flash point below one hundred four (104) degrees Fahrenheit and having a vapor pressure not exceeding forty (40) pounds per square inch absolute at one hundred (100) degrees Fahrenheit.

(k) "Gas appliance" means any device which utilizes gas to produce light, heat, power, refrigeration or air conditioning.

(*l*) "System" means an assembly consisting of one or more containers with a means for conveying liquefied compressed gas or compressed natural gas from the container or containers to dispensing or consuming devices (either continuously or intermittently) and which incorporates components intended to achieve control of quantity, flow, pressure or state (either liquid or vapor). Agricultural implements and commercial installations used in refrigeration plants are excluded where anhydrous ammonia is used.

(m) "Atmospheric pressure container" means any container for the refrigerated storage of liquefied anhydrous ammonia designed for a maximum working pressure of fifteen (15) pounds per square inch gauge or less and having a water capacity in excess of seven hundred thousand (700,000) gallons.

(n) "Distributor" means any person who is engaged in the distribution of liquefied compressed gases, either wholesale or retail. Also included under this definition are "commercial carriers," as identified by the Interstate Commerce Commission, who transport or haul liquefied compressed gases which are to be distributed or sold within this state.

(o) "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust or any other group or combination acting as a unit, and includes the plural as well as the singular in number. "Person" shall include husband or wife or both where joint benefits are derived from the operation of a business or activity covered under this chapter. "Person" shall include any state, county, municipality or other agency engaged in a business or activity covered under this chapter.

SOURCES: Codes, 1942, § 5104-03; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 3; Laws, 1948, ch. 317, § 3; Laws, 1950, ch. 475, § 1; Laws, 1962, ch. 197, § 1; Laws, 1964, ch. 237, § 2; Laws, 1980, ch. 416, § 1; Laws, 1980, ch. 561, § 27; Laws, 1982, ch. 408, § 3; Laws, 1982, ch. 437, § 1; Laws, 1991, ch. 442, §n 1; Laws, 1995, ch. 475, § 10, eff from and after July 1, 1995.

Cross References — Installer's certificate, see § 75-57-47.

§ 75-57-7. Containers.

After March 16, 1948, all containers and pertinent equipment used, sold, and installed in this state for the storage, dispensing and transportation of liquefied compressed gases for the purposes of providing gas for industrial, commercial, agricultural, and domestic uses shall be designed, constructed, equipped, manufactured, and installed as specified in this chapter.

SOURCES: Codes, 1942, § 5104-04; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 4; Laws, 1948, ch. 317, § 4.

JUDICIAL DECISIONS

1. In general.

Purchaser of butane gas tank in 1945 is not entitled to recover damages from seller for alleged sale to him of defective tank on ground that violation of the Liquefied Compressed Gas Equipment Inspection Act of 1948, designed to protect buyers, is negligence as matter of law, as that act was not in effect at time of sale and installation of tank, and no violation of that act or act in effect at time of sale was shown. Mississippi Butane Gas Sys. v. Welch, 208 Miss. 637, 45 So. 2d 262 (1950).

§ 75-57-9. Adoption of national codes and standards; modification of standards by State Liquefied Compressed Gas Board; exemptions.

The codes of the American Society of Mechanical Engineers — Boiler and Pressure Vessel Code — Section II Material Specifications; Section VIII Pressure Vessels; and Section IX Welding and Brazing Qualifications; American Petroleum Institute Standard 620 (American Petroleum Institute Recommended Rules for the Design and Construction of Large Welded Low-pressure Storage Tanks); Standards of the National Fuel Gas Code as published by the National Fire Protection Association, NFPA-54; the Standards for the Storage and Handling of Liquefied Petroleum Gas as published by the National Fire Protection Association, NFPA-58; and other National Fire Protection Association standards applicable to liquefied petroleum gas and compressed gas; and the safety requirements for the storage and handling of anhydrous ammonia as published by the American National Standards Institute, Inc.; as the codes and standards referred to herein as revised, and standards referred to above are hereby adopted by reference as specifications for the purpose of material standards, construction, handling, transportation and installation of all liquefied compressed gas systems and inspection and operation of pressure vessels. Copies of all codes and standards referred to in the foregoing are available for public use and inspection at the office of the Commissioner of Insurance. The State Liquefied Compressed Gas Board is fully authorized and empowered in the exercise of its authority granted under this section to change, delete from or amend from time to time the national code and standards adopted by reference in this section. Any changes, deletions or amendments made to the national codes and codes adopted by reference in this section shall be made in strict compliance with the Mississippi Administrative Procedures Law, Chapter 43, Title 25, Mississippi Code of 1972, and with the approval of the Commissioner of Insurance. The State Liquefied Compressed Gas Board is fully authorized and empowered in the exercise of the authority granted under this section to exempt or grant deviations from the national code and standards adopted by reference in this section with respect to reconditioned or remanufactured railroad tank car pressure vessels designed for and used as stationary storage tanks for agricultural fertilizers.

SOURCES: Codes, 1942, § 5104-04.5; Laws, 1952, ch. 346, § 1; Laws, 1958, ch. 476, § 1; Laws, 1960, ch. 405, § 1; Laws, 1962, ch. 197, § 2; Laws, 1964, ch. 237, § 3; Laws, 1977, ch. 387; Laws, 1980, ch. 416 § 2; Laws, 1980, ch. 561, § 28; Laws, 1982, ch. 408, § 4; Laws, 1982, ch. 437, § 2; Laws, 1995, ch. 475, § 13; Laws, 2001, ch. 380, § 1, eff from and after July 1, 2001.

Cross References — State Liquefied Compressed Gas Board creation, powers and duties, etc., see § 75-57-101.

§ 75-57-11. Repealed.

Repealed by Laws, 1980, ch. 416, § 16, eff from and after July 1, 1980.

[Codes, 1942, § 5104-05; Laws, 1940, ch. 170; Laws, 1942, ch. 244; Laws, 1946, ch. 265, § 5; Laws, 1948, ch. 317, § 5; Laws, 1950, ch. 475, § 2; Laws, 1952, ch. 346, § 2; Laws, 1960, ch. 405, § 2; Laws, 1962, ch. 197, § 3; Laws, 1964, ch. 237, § 4]

Editor's Note — Former § 75-57-11 provided for design working pressure and classification of storage containers.

Cross References — State Liquefied Compressed Gas Board creation, powers and duties, etc., see § 75-57-101.

§ 75-57-13. Regulation of storage of gases in underground storage spaces.

It is expressly provided that, subsequent to the issuance of a permit by the Mississippi State Oil and Gas Board permitting the creation of such spaces, compressed air, liquefied compressed gases, refined hydrocarbons, oil or gas, or both, and those liquefied compressed gases known as butane or propane or mixtures thereof, may be stored in artificially formed underground storage spaces where such cavities are dissolved in salt beds and that the provisions of Section 53-3-155 shall be applicable for the issuance of a permit for the creation and use of such spaces. The Oil and Gas Board shall exercise jurisdiction over safety precautions regarding the storage and transmission of the compressed air, liquefied compressed gases, refined hydrocarbons, oil or gas, or both, only while it is underground and in the associated wellhead facilities as prescribed and set out in Section 53-1-17(3)(p). The State Liquefied Compressed Gas Board shall be responsible for promulgating and enforcing safety standards beyond the associated wellhead facilities, during transmission above ground and while the compressed air, liquefied compressed gases, refined hydrocarbons, oil and gas is stored above ground.

SOURCES: Codes, 1942, § 5104-05.5; Laws, 1952, ch. 346, § 3; Laws, 1975, ch. 419, § 2; Laws, 1980, ch. 416, § 3; Laws, 1980, ch. 561, § 29; Laws, 1982, ch. 408, § 5; Laws, 1992, ch. 344 § 10; Laws, 1995, ch. 475, § 14; Laws, 2014, ch. 417, § 1, eff from and after July 1, 2014.

Cross References — Provisions governing the underground storage of natural gas or compressed air, see § 53-3-151 et seq.

State Liquefied Compressed Gas Board creation, powers and duties, etc., see § 75-57-101.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 158.

9 Am. Jur. Legal Forms, Gas and Oil, Form 129:237 (gas storage lease).

§ 75-57-15. Minimum storage facilities within the state required of certain distributors of liquefied petroleum gas; enforcement.

(1) Before any person, firm or corporation shall enter the liquefied petroleum gas business as a distributor of liquefied petroleum gas, who plans to make retail or wholesale tank truck deliveries to consumer, and before a permit may be granted as required by Section 75-57-49, such person, firm or corporation shall locate, within the State of Mississippi, a propane storage container of not less than fourteen thousand (14,000) water gallons capacity and an aggregate total of propane storage containers of not less than thirty thousand (30,000) water gallons capacity for each such permit granted; and provided further, that nothing herein contained shall be construed to apply to a liquefied petroleum gas distributor operating retail service stations who does not operate a delivery tank truck to ultimate consumer. Storage containers used in connection with industrial, agricultural, manufacturing, processing or commercial enterprises will not necessarily meet the requirements of this section.

(2) All storage facilities shall meet the Insurance Commissioner's approval, and he or she is hereby vested with the sole and exclusive power and authority to administer and enforce the provisions of this section.

(3) Nothing in this section shall affect a permit granted to a person, firm or corporation before July 1, 1991.

SOURCES: Codes, 1942, § 5104-05.7; Laws, 1960, ch. 166, §§ 1-3; Laws, 1980, ch. 416, § 4; Laws, 1980, ch. 561, § 30; Laws, 1982, ch. 408, § 6; Laws, 1991, ch. 442, § 2, eff from and after July 1, 1991.

§ 75-57-17. Minimum working pressures and wall and head thicknesses.

Unless otherwise specified in this chapter, no container shall have a designed working pressure of less than that required for a 100 type. Any container to be charged with a compressed gas which has a vapor pressure at 100 degrees F. of between 151 and 215 pounds per square inch gauge shall not be less than a 200 type. All above-ground containers supplying gases directly to any appliance shall be of the 200 type except containers used in industrial plants such as gins, sawmills, oil well drilling rigs, etc., but such container shall meet all other requirements of this chapter.

It is expressly provided, however, that on and after July 1, 1960, no container manufactured after July 1, 1960, with a working pressure of less than that required for a 200 type container, except refrigerated storage or storage used at refineries, shall be installed or used in this state as a domestic, commercial or industrial stationary container.

SOURCES: Codes, 1942, § 5104-06; Laws, 1940, ch. 170; Laws, 1942, ch. 244; Laws, 1946, ch. 265, § 6; Laws, 1948, ch. 317, § 6; Laws, 1950, ch. 475, § 3; Laws, 1952, ch. 346, § 4; Laws, 1960, ch. 405, § 3; Laws, 1964, ch. 237, § 5, eff on and after July 1, 1964.

§§ 75-57-19 through 75-57-27. Repealed.

Repealed by Laws 1980, ch. 416, § 16, eff from and after July 1, 1980.

§ 75-57-19. [Codes, 1942, § 5104-07; Laws, 1942, ch. 244; Laws, 1946, ch. 265, § 6; Laws, 1948, ch. 317, § 7; Laws, 1964, ch. 237, § 6]

§ 75-57-21. [Codes, 1942, § 5104-08; Laws, 1948, ch. 317, § 8; Laws, 1950, ch. 475, § 4; Laws, 1960, ch. 405, § 4]

§ 75-57-23. [Codes, 1942, § 5104-09; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 8; Laws, 1948, ch. 317, § 9; Laws, 1952, ch. 346, § 5; Laws, 1958, ch. 476, § 2; Laws, 1960, ch 405, § 5]

§ 75-57-25. [Codes, 1942, § 5104-10; Laws, 1948, ch. 317, § 10; Laws, 1950, ch. 475, § 5; Laws, 1952, ch. 346, § 6, Laws, 1958, ch. 476, § 3; Laws, 1960, ch. 405; Laws, 1962, ch. 197, § 4; Laws, 1964, ch. 237, § 7]

§ 75-57-27. [Codes, 1942, § 5104-10.1; Laws, 1948, ch. 317, § 10; Laws, 1950, ch. 475, § 5; Laws, 1952, ch. 346, § 7; Laws, 1964, ch. 237, § 8]

Editor's Note — Former § 75-57-19 pertained to mounting of truck transport tanks.

Former § 75-57-21 pertained to safety relief devices.

Former § 75-57-23 regulated installation of gas piping and gas appliances in buildings.

Former § 75-57-25 pertained to installation of anhydrous ammonia containers.

Former § 75-57-27 regulated safety equipment for anhydrous ammonia plants and trucks.

§ 75-57-29. Location of anhydrous ammonia bulk storage plants within limits of municipalities; venting of tanks.

Anhydrous ammonia bulk storage plants shall not be installed within the limits of any municipality unless such anhydrous ammonia bulk storage plant is located within an industrial park or an industrial area serviced by a municipal fire department. The installation of any such bulk storage plant within the limits of a municipality the construction of which is begun after February 1, 1989, must be approved by the governing authorities of the municipality by ordinance duly spread upon the minutes of such municipality. No anhydrous ammonia bulk storage plant the construction of which is begun after July 1, 1995, shall be located within two hundred (200) feet from any residence, office, store or other regularly occupied building, except buildings occupied by the operator of the bulk storage plant. No anhydrous ammonia tank shall be erected within two hundred (200) feet from any residence, office, store or other regularly occupied building, except buildings occupied by the operator of the bulk storage plant. Such tanks shall be vented in accordance with the requirements of the Commissioner of Insurance.

SOURCES: Codes, 1942, § 5104-10.2; Laws, 1948, ch. 317, § 10; Laws, 1950, ch. 475, § 5; Laws, 1952, ch. 346, § 8; Laws, 1980, ch. 416, § 5; Laws, 1980, ch. 561, § 31; Laws, 1982, ch. 408, § 7; Laws, 1989, ch. 302, § 1; Laws, 1995, ch. 475, § 15, eff from and after July 1, 1995.

JUDICIAL DECISIONS

1. In general.

This section does not preclude municipality from extending its limits to include areas within which were located ammonia storage plants. Parker Gin Corp. v. Town of Drew, 214 Miss. 147, 58 So. 2d 372 (1952), overruled on other grounds, In re City of Indianola, 226 Miss. 760, 85 So. 2d 212 (1956).

§ 75-57-31. Removal of anhydrous ammonia storage plants from municipalities; regulation of vehicles transporting anhydrous ammonia; investigation of complaints involving storage facilities and subsequent condemnation proceedings.

The governing body of any municipality is authorized to require the removal of any anhydrous ammonia storage plant which may be located within its corporate limits, if, after hearing, it is established that such plant is unsafe in any manner. Any aggrieved person may appeal from such decision of the governing body to the circuit court in the county where such municipality is located. The governing authorities of any municipality are also authorized and empowered to regulate and control the operation of vehicles transporting anhydrous ammonia over the streets of such municipality to restrict the operation of such vehicle to such streets as shall be designated by said authorities and to regulate and restrict the parking of such vehicles upon municipal streets.

The State Board of Health is authorized, empowered and directed to investigate any complaints as to anhydrous ammonia storage facilities when such complaints are in the nature of a nuisance, health or property hazard. If, after an investigation and hearing, it is determined that the complaints are well founded, the State Board of Health shall immediately condemn any such storage facility and the owner or operator thereof shall, within ninety (90) days from date of condemnation, remove such storage facility to a place which will meet the approval of the State Board of Health or immediately empty the storage facility and discontinue its use. When any person fails or refuses to comply with the orders of the State Board of Health, the State Liquefied Compressed Gas Board or Commissioner of Insurance may seek an order of any circuit or chancery court to carry out the orders of the State Board of Health, and the violator shall be assessed all legal expenses, costs of court and all other expenses necessary to effectuate the orders of the State Board of Health.

SOURCES: Codes, 1942, § 5104-11; Laws, 1948, ch. 317, § 11; Laws, 1980, ch. 416, § 6; Laws, 1980, ch. 561, § 32; Laws, 1982, ch. 408, § 8; Laws, 1982, ch. 437, § 3; Laws, 1995, ch. 475, § 16, eff from and after July 1, 1995.

Cross References — General duties of the state board of health, see § 41-3-15.

State Liquefied Compressed Gas Board creation, powers and duties, etc., see § 75-57-101.

§ 75-57-33. Installing and charging cylinders.

No cylinder installation shall be made unless the cylinders are designed, fabricated, tested and marked in accordance with the regulations of the United States Department of Transportation or the United States Interstate Commerce Commission, and constructed for a designed pressure of not less than two hundred forty (240) pounds per square inch. Cylinders with a water capacity of less than two hundred fifty (250) pounds shall be charged by weight with liquefied petroleum gas only at bulk storage or cylinder filling plants and not from mobile units such as delivery trucks, except cylinders installed as part of a system burning liquefied petroleum gas or compressed natural gas as a motor fuel or for farming purposes such as in flame cultivators or hot air balloon cylinders. Cylinders with a water capacity of two hundred fifty (250) pounds or larger may be charged at the installation from mobile units, provided they are equipped with a fixed liquid level gauging device and a filling valve, which is designed in accordance with the national standards and codes, in addition to other required or acceptable valves and fittings. Cylinders with a water capacity of two hundred fifty (250) pounds or larger, in addition to having all the necessary valves and fittings, must be installed permanently in accordance with the national standard and codes.

SOURCES: Codes, 1942, § 5104-13; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 7; Laws, 1948, ch. 317, § 13; Laws, 1952, ch. 346, § 9; Laws, 1980, ch. 416, § 7; Laws, 1991, ch. 442, § 3, eff from and after July 1, 1991.

§ 75-57-35. Applicability of regulations of State Liquefied Compressed Gas Board and of national associations.

Wherein sections of this chapter do not exceed those requirements of the current published regulations of the National Fire Protection Association applicable to liquefied petroleum gas, the laws and regulations of the State Liquefied Compressed Gas Board shall be followed.

When amendments are made to the liquefied petroleum gas regulations of the National Fire Protection Association, such amendments may be adopted, provided they do not conflict with other sections of this chapter. Should a conflict occur between the National Fire Protection Association regulations or any regulations referred to in this chapter and the liquefied petroleum gas regulations of the State Liquefied Compressed Gas Board, then the State

Liquefied Compressed Gas Board's regulation shall govern. The inspection and approval of the inspectors in accordance with this chapter shall be in addition to approvals and listings of Underwriters Laboratories, Inc., American Gas Association or other national testing laboratories. Provided further, that all compressed gas containers covered by this chapter shall be approved by the inspectors provided for herein.

SOURCES: Codes, 1942, § 5104-14; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 9; Laws, 1948, ch. 317, § 14; Laws, 1980, ch. 416, § 8; Laws, 1980 ch. 561, § 33; Laws, 1982, ch. 408, § 9; Laws, 1995, ch. 475, § 17, eff from and after July 1, 1995.

Cross References — State Liquefied Compressed Gas Board, see § 75-57-101 et seq.

§ 75-57-37. Exempt containers.

All containers and pertinent equipment owned or in use by the government of the United States of America are exempt from the provisions of this chapter. Liquefied petroleum gas containers using liquefied petroleum gas as a fuel to propel recreational vehicles, automobiles, trucks and other vehicles, or used as a source of fuel to produce light, heat, power, refrigeration of air conditioning on mobile homes, recreational vehicles, campers, etc., that are in interstate travel, and designed, fabricated, tested and marked in accordance with the regulations of the United States Department of Transportation (DOT) or the United States Interstate Commerce Commission (ICC) and all cylinders with a water capacity of less than two hundred fifty (250) pounds, when used for other than motor fuel purposes in this state, are exempt from inspection.

SOURCES: Codes, 1942, § 5104-15; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 10; Laws, 1948, ch. 317, § 15; Laws, 1952, ch. 346, § 10; Laws, 1980, ch. 416, § 9, eff from and after July 1, 1980.

§ 75-57-39. Repealed.

Repealed by Laws, 1980, ch. 416, § 16, eff from and after July 1, 1980.

[Codes, 1942, § 5104-16; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 11; Laws, 1948, ch. 317, § 16]

Editor's Note — Former § 75-57-39 required that petroleum gases be odorized.

§ 75-57-41. Repealed.

Repealed by Laws, 1991, ch. 442, § 7, eff from and after July 1, 1991.

[Codes, 1942, § 5104-17; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 12; Laws, 1948, ch. 317, § 17; Laws, 1950, ch. 475, § 6; Laws, 1952, ch. 346, § 11; Laws, 1980, ch. 416, § 10; Laws, 1980, ch. 561, § 34; Laws, 1982, ch. 408, § 10; 1982, ch. 437, § 4]

Editor's Note — Former § 75-57-41, provided penalties for installing, using or filling containers or pressure vessels before the containers or vessels were inspected and tagged by the Fire Marshall.

§§ 75-57-43 and 75-57-45. Repealed.

Repealed by Laws, 1980, ch. 416, § 16, eff from and after July 1, 1980.

§ 75-57-43. [Codes, 1942, § 5104-18; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 13; Laws, 1948, ch. 317, § 18]

§ 75-57-45. [Codes, 1942, § 5104-19; Laws, 1946, ch. 265, § 14; Laws, 1948, ch. 317, § 19; Laws, 1952, ch. 346, § 12]

Editor's Note — Former § 75-57-43 pertained to inspection of installations prior to the passage of Chapter 57 of Title 75.

Former § 75-57-45 required reports of sales of liquefied compressed gas containers or appliances.

§ 75-57-47. Installation of systems, etc.; inspection; correction of installations, etc.; certificates and permits; remedies for violations.

(1) From and after March 16, 1948, any installer or other person who shall install, connect, alter, extend, change or repair any liquefied compressed gas or compressed natural gas system, container or appliance whatsoever, or who shall install, connect, change, extend, alter or repair any piping or fitting connected with or attached to any liquefied compressed gas or compressed natural gas container, system or appliance shall, within fifteen (15) days after the completion thereof, give notice to the State Liquefied Compressed Gas Board, in writing, on forms to be provided by the State Liquefied Compressed Gas Board, that such installation, connection, alteration, extension, change or repair has been made, which notice shall give full details with reference thereto, and shall give the name of the person at whose order same was made, and the name of the installer, as provided in this chapter, under whose supervision the installation, alteration, etc., was made and the address of the premises upon which same was made. Any person who shall install, connect, alter, extend, change or repair any liquefied compressed gas or compressed natural gas system, container or appliance, or any piping or fitting connected or attached thereto, without giving notice to the State Liquefied Compressed Gas Board as provided herein shall be subject to the sanctions set out in this chapter.

(2) Upon receiving notice of any installation of a liquefied compressed gas system or natural gas fueling system other than a liquefied petroleum gas carburetion system, it shall be at the discretion of the Commissioner of Insurance to cause same to be inspected, and if he or she approves same after such inspection, he or she shall leave upon such premises a written certificate of approval. Upon receiving notice of any connection, alteration, extension, change or repair to any system required to be inspected at the time of installation under the provisions of this subsection, the Commissioner of

Insurance may cause the system to be inspected if he or she believes that sufficient change or repair has been made so as to alter the system from its original installation.

If, after such inspection, the inspector finds that the installation or repair has not been properly made, he or she shall report such fact to the distributor or installer making the installation and request that corrections be made within seventy-two (72) hours after the time of such inspection, if the defects are such that can be corrected without the necessity of condemning the entire system. Any distributor or installer who fails or refuses to make the corrections after requested so to do by the inspector, after a hearing before the State Liquefied Compressed Gas Board, may have his authority or certificate of compliance suspended or revoked.

Installers, as defined in this chapter, are hereby authorized to issue temporary certificates of approval for use before inspection by the Commissioner of Insurance, but no certificate issued by an installer shall be valid for a period longer than one hundred twenty (120) days from date of completion or alteration, repair or installation covered by said certificate. The provisions of this paragraph shall not relieve the dealer, or other person, from the liability of having such installation inspected by the Commissioner of Insurance, as provided in this chapter.

All certificates of approval and permits issued by liquefied gas inspectors under the terms of this section shall be executed in duplicate, and the copy thereof shall be filed and preserved in the office of the State Liquefied Compressed Gas Board for not less than three (3) years from the date thereof.

(3) All liquefied petroleum gas carburetion systems and natural gas carburetion systems shall be installed by an installer, or automobile manufacturer, or be inspected by a representative of the State Liquefied Compressed Gas Board or Commissioner of Insurance when not installed by such qualified installer or manufacturer.

All liquefied petroleum or natural gas carburetion systems installed on vehicles, including school buses, used in public transportation shall be inspected by a field inspector. The State Liquefied Compressed Gas Board may cause to be inspected any installations of liquefied petroleum gas or natural gas carburetion systems on any other type vehicles as they deem necessary. All such installations shall comply with the rules and regulations promulgated by the State Liquefied Compressed Gas Board.

No person may, for a fee, install liquefied petroleum or natural gas carburetion systems unless such person holds a license as an installer issued by the State Liquefied Compressed Gas Board.

Any person who operates a vehicle on which a liquefied petroleum or natural gas carburetion system has been installed by a person other than an installer shall apply to the State Liquefied Compressed Gas Board for inspection of such installation within fifteen (15) days of such installation. No distributor of liquefied petroleum or natural gas, or any other person, shall fill or cause to be filled any such system which has not been inspected as required by this chapter.

Any person who violates any of the provisions of this subsection shall be subject to the penalties provided in this chapter.

(4) No distributor of liquefied compressed gas, or other person, shall fill, cause to be filled, or permit to be filled, any container or system unless the installation, alteration, extension, connection, change and repair thereof, and of all appliances connected and used therewith, and of all pipings and fittings connected or attached thereto, shall have first been inspected and approved by an inspector of the State Liquefied Compressed Gas Board or Commissioner of Insurance or installed or altered by an installer as described in this chapter, and unless there is exhibited to such distributor or other person the approval of the inspector or installer provided for in the foregoing paragraphs; nor shall any person turn on or use such systems, containers, appliances, piping or fittings until same have been so inspected and approved, and such approval is exhibited to him. Any person who shall violate the provisions of this subsection, after a duly called hearing before the State Liquefied Compressed Gas Board, may have his license suspended or revoked.

(5) Any liquefied compressed gas dealer, or other person, may apply to the State Liquefied Compressed Gas Board, for permission to take an examination to qualify as an installer, as defined under the provisions of this chapter. The State Liquefied Compressed Gas Board shall prepare an examination which is sufficient to test the knowledge of the applicant as to his qualifications for installing, repairing, altering, etc., equipment used in the handling of liquefied compressed gases and of his knowledge of the handling and storage of such gases. If, after examination, the applicant is found to be competent and to possess sufficient qualifications, the State Liquefied Compressed Gas Board shall issue to such applicant a license or certificate which shall designate the system or systems which the applicant is qualified to install. The State Liquefied Compressed Gas Board shall have the authority to establish different classes of installers. Should the holder of any such certificate perform his duties in an unworkmanlike manner or be guilty of negligence, carelessness, drunkenness on duty, or other good cause, then the State Liquefied Compressed Gas Board may cancel the certificate, good cause being shown; however, before the State Liquefied Compressed Gas Board shall cancel any such certificate it shall give the holder thereof five (5) days' written notice of its intention so to do, and shall grant to the person holding such certificate an opportunity to be heard before the State Liquefied Compressed Gas Board at such time and place as shall be fixed in such notice, to show cause, if any he or she can, why the license or certificate should not be suspended or revoked. Upon application to the State Liquefied Compressed Gas Board, and upon reexamination of the applicant by the State Liquefied Compressed Gas Board, a new certificate may be issued, but no such renewal certificate shall be issued within sixty (60) days of the cancellation of the original certificate. The State Liquefied Compressed Gas Board shall have authority to conduct any type examination of applicants desiring renewal certificates which will, in its opinion, test applicant's qualifications for the issuance of a renewal certificate. Any installer's certificates heretofore issued and outstanding shall be valid until suspended or revoked.

(6) Any dealer or installer who shall alter or change any system, or bulk storage plant system, or who shall substitute or change any such fitting, after said system has been approved by an inspector of the Commissioner of Insurance, without first obtaining the permission of such an inspector so to do, may be enjoined from continuing in the business of a dealer or installer, as defined in this chapter, in the State of Mississippi for a period of not less than one (1) year, and any judge or chancellor authorized to grant injunctions may grant and issue the injunction herein authorized, but no such injunction shall be issued except upon notice of not less than five (5) days to the dealer or installer sought to be enjoined. It is expressly provided, however, that nothing herein shall prevent a dealer or an installer from making additional installations to any such system, provided that proper notice thereof is given to the Commissioner of Insurance on forms provided by him or her in the same manner as such notice is required to be given in cases of installations, repairs and alterations; nor shall anything herein prevent a dealer or an installer from making emergency repairs to any system or fitting when such repairs are made necessary by a mechanical defect, breakdown or injury to such system or fitting, but in the event of such emergency repairs, the dealer or installer making same shall, within fifteen (15) days after making such repairs, give the Commissioner of Insurance notice of the details and facts thereof in writing.

SOURCES: Codes, 1942, § 5104-20; Laws, 1946, ch. 265, § 15; Laws, 1948, ch. 317, § 20; Laws, 1950, ch. 475, § 7; Laws, 1980, ch. 416, § 11; Laws, 1980, ch. 561, § 35; Laws, 1982, ch. 408, § 11; Laws, 1982, ch. 437, § 5; Laws, 1991, ch. 442, § 4; Laws, 1995, ch. 475, § 18, eff from and after July 1, 1995.

Cross References — Definition of installer, see § 75-57-5.

State Liquefied Compressed Gas Board creation, powers and duties, etc., see § 75-57-101.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-57-49. Permitee requirements; proof of financial responsibility; issuance and duration of permits.

(1) Before any person shall be granted a permit to, or shall engage in or continue in the business of the distributing, either wholesale or retail, installing, altering, extending, changing or repairing of any liquefied compressed gas system, appliance or container, or in the business of distributing and selling liquefied compressed gas, either at wholesale or retail, whether from trucks or other vessels, in cylinders or in any other manner, such person shall satisfy the State Liquefied Compressed Gas Board that he or she is of good character, is competent to transact business so as to safeguard the interest of the public, and is financially responsible; and this provision as to financial responsibility shall be met by such person by filing with the State Liquefied Compressed Gas Board evidence that he or she has in force such of the hereinafter listed insurance policies on standard contract forms and written by an insurance company, or companies, qualified to do business in the

State of Mississippi, as the State Liquefied Compressed Gas Board shall require, based upon those activities listed above in which such person is engaged, to wit:

ANY PERSON THAT ENGAGES IN FILLING CYLINDERS AND MOTOR FUEL TANKS WITH LIQUEFIED COMPRESSED GAS ON THEIR PREMISES OR ANY PERSON WHO IS IN THE BUSINESS OF INSTALLING LC GAS CARBURETION OR APPLIANCES:

	Limits of Liability	
	Each Occasion	Aggregate
Manufacturers and Contractors Public Liability	$100,000	$300,000
Products Liability	$100,000	$300,000
Workers' Compensation and Employers' Liability Insurance	State Statute	

ANY PERSON THAT ENGAGES IN ANY PHASE OF THE LIQUEFIED COMPRESSED GAS BUSINESS OTHER THAN CYLINDER-FILLING LOCATIONS:

	Limits of Liability		
	Bodily Injury		Property
	Each Person	Each Accident	Damage Each Accident
Automobile public liability	$500,000	$1,000,000	$1,000,000
	Each Occasion	Aggregate	
Manufacturers and Contractors Public liability	$1,000,000	$1,000,000	
Products liability	$1,000,000	$1,000,000	
Workers' Compensation and Employers' Liability Insurance	State Statute		

(2) The State Liquefied Compressed Gas Board shall not require insurance coverage as specified above unless the hazard of liquefied compressed gases is involved.

(3) No policy issued under the provisions of this chapter may be cancelled before thirty (30) days from the date of receipt by the Commissioner of Insurance of written notice of intention to cancel the policy.

(4) It is expressly provided, however, that in lieu of filing with the State Liquefied Compressed Gas Board evidence that such insurance, as outlined above, is in force, any such person may file with the State Liquefied Compressed Gas Board a good and sufficient surety bond executed by a surety company licensed to do business in this state in the amount of One Million Dollars ($1,000,000.00), which such bond shall be payable to the State of Mississippi and shall be conditioned to guarantee the payment of all damages

which proximately result from any act of negligence on the part of such person, or their agents or employees, while engaged in any of the activities herein specified. In lieu of the surety bond, any such person may execute and file a good and sufficient personal bond in the amount and conditioned as specified above, which such personal bond shall be secured by bonds or other obligations of the State of Mississippi or the United States government, of equal value.

(5) Upon compliance with the provisions of this section, where such compliance is required, and upon compliance with all other provisions of this chapter, the State Liquefied Compressed Gas Board shall issue to such dealer a permit to engage in such business, but not before. All such permits shall be valid until voluntarily surrendered, or until suspended, revoked or cancelled by the State Liquefied Compressed Gas Board, the Commissioner of Insurance or the chancery or circuit court. All permits issued under the provisions of Chapter 170, Laws of 1940, as amended, or Chapter 265, Laws of 1946, shall remain in full force and effect until the expiration date thereof at which time they must be renewed under the terms and conditions of this chapter.

SOURCES: Codes, 1942, § 5104-21; Laws, 1940, ch. 170, 1942, ch. 244; Laws, 1946, ch. 265, § 16; Laws, 1948, ch. 317, § 21; Laws, 1950, ch. 475, § 8; Laws, 1952, ch. 346, § 13; Laws, 1960, ch. 405, § 7; Laws, 1980, ch. 416, § 12; Laws, 1980, ch. 561, § 36; Laws, 1982, ch. 408, § 12; Laws, 1982, ch. 437, § 6; Laws, 1991, ch. 442, § 5; Laws, 1995, ch. 475, § 19; Laws, 2012, ch. 319, § 1, eff from and after passage (approved Apr. 5, 2012.)

Cross References — Permits for sellers and distributors of liquefied compressed gas for use in motor vehicles, see § 27-59-7.

Applicability of requirements of this section to permit to engage in business as distributor of liquefied compressed gas, see § 27-59-9.

Minimum storage facilities which are prerequisite to issuance of permit, see § 75-57-15.

State Liquefied Compressed Gas Board creation, powers and duties, etc., see § 75-57-101.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 144 et seq.

§ 75-57-51. Repealed.

Repealed by Laws, 1991, ch. 442 § 8, eff from and after July 1, 1991.

[Codes, 1942, § 5104-22; Laws, 1940, ch. 170; Laws, 1942, ch. 244; Laws, 1946, ch. 265, § 17; Laws, 1948, ch. 317, § 22; Laws, 1964, ch. 237, § 9; Laws, 1980, ch. 416, § 13; Laws, 1980, ch. 561, § 37]

Editor's Note — Former § 75-57-51, provided that a manufacturer's data sheet, as required by the American Society of Mechanical Engineers Code, be furnished to the liquefied compressed gas inspector on or before the date a liquefied compressed container is to be inspected.

§ 75-57-53. Repealed.

Repealed by Laws, 1991, ch. 442, § 9, eff from and after July 1, 1991.

[Codes, 1942, § 5104-23; Laws, 1948, ch. 317, § 23; Laws, 1950, ch. 488, § 1; Laws, 1952, ch. 346, § 14; Laws, 1960, ch. 405, § 8; Laws, 1964, ch. 237, § 10; Laws, 1966, ch. 566, § 1; Laws, 1968, ch. 532, § 1; Laws, 1980, ch. 561, § 38; Laws, 1982, ch. 408, § 13; Laws, 1984, ch. 488, § 279]

Editor's Note — Former § 75-57-53, authorized the Fire Marshall to establish and enforce rules and regulations relating to the inspection of containers, vessels and tanks designed for compressed gas.

§ 75-57-55. Repealed.

Repealed by Laws, 1995, ch. 475, § 23, eff from and after July 1, 1995.

[Codes, 1942, § 5104-24; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 18; Laws, 1948, ch. 317, § 24; Laws, 1980, ch. 416, § 14; Laws, 1991, ch. 442, § 6]

Editor's Note — Former § 75-57-55 related to penalties for violations of the chapter. For similar provisions, see § 75-57-107.

§ 75-57-57. Sanctions and remedies for failure to obtain permit.

Any person, firm or corporation operating or engaging in the business of selling or installing liquefied compressed gas containers or systems, or in the business of selling or distributing liquefied compressed gas or appliances without first having secured a permit from the State Liquefied Compressed Gas Board as provided by this chapter, or any person, firm or corporation who shall be convicted for a second or subsequent offense of willfully violating any of the provisions of this chapter, may be enjoined from engaging in the business as a distributor of liquefied compressed gas or appliances, either wholesale or retail, or in the business of selling or installing liquefied compressed gas containers, appliances or systems in the State of Mississippi for a period of not less than one (1) year, nor more than five (5) years. Any judge or chancellor in this state, authorized to grant injunctions, may grant an injunction as authorized by this section, provided that no such injunction shall be granted unless proper notice as required by law shall have first been given to such person, firm or corporation.

SOURCES: Codes, 1942, § 5104-25; Laws, 1940, ch. 170; Laws, 1946, ch. 265, § 19; Laws, 1948, ch. 317, § 25; Laws, 1980, chs. 416, § 15; 561, § 39; Laws, 1982, ch. 408, § 14; Laws, 1995, ch. 475, § 20, eff from and after July 1, 1995.

Cross References — Injunctions, generally, see § 11-13-1.

Injunction against person who engages in business without compliance with permit requirements, see § 75-57-49.

Permits generally, see § 75-57-61.

State Liquefied Compressed Gas Board creation, powers and duties, etc., see § 75-57-101.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 345 et seq.

§ 75-57-59. Repealed.

Repealed by Laws, 1982, ch. 437, § 8, eff from and after April 5, 1982. [Codes, 1942, § 5104-26; Laws, 1948, ch. 317, § 26]

Editor's Note — Former § 75-57-59 contained provisions relating to the applicability of Chapter 57 of Title 75.

§ 75-57-61. Minimum storage requirements and facilities for nonresident distributors.

(1) Whenever the existing or future laws, rules or regulations of any other state of the United States shall require minimum storage facilities, of any type, character or kind, whether fixed or permanent, in connection with the distribution of liquefied compressed gas at retail, of a resident of this state, then in every such case where the residents engaging in the distribution of liquefied petroleum gas at retail of such state desire to engage in or continue to do business in this state, under permit as required by Section 75-57-49, the nonresident distributor of liquefied petroleum gas at retail shall be required to establish within the State of Mississippi the same minimum storage requirements and facilities imposed by the laws, rules or regulations of such state upon residents of this state.

(2) This section shall be enforced by the State Liquefied Compressed Gas Board and all such storage facilities required to be established within the State of Mississippi shall meet the approval of the State Liquefied Compressed Gas Board.

SOURCES: Codes, 1942, § 5104-31; Laws, 1956, ch. 388, §§ 1, 2; Laws, 1980, ch. 561, § 40; Laws, 1982, ch. 408, § 15; Laws, 1995, ch. 475, § 21, eff from and after July 1, 1995.

Cross References — State Liquefied Compressed Gas Board creation, powers and duties, etc., see § 75-57-101.

§ 75-57-63. Unlawful trust and combine; impeding competition or monopolizing sales of liquefied petroleum gases or liquefied petroleum gas appliances.

Any corporation, domestic or foreign, or any individual, partnership or association of persons whatsoever who with intent to engross or forestall or impede the competitive sale of or monopolize the sale of liquefied petroleum gases or liquefied petroleum gas consumer appliances in the State of Mississippi or in any community in the State of Mississippi, or, without such intent, either directly or indirectly accomplishes such result to a degree inimical to public welfare by purchasing or offering to purchase the equipment or installation of any consumer and obtaining the exclusive right to serve or make sales to said consumer, shall be deemed and held a trust and combine within the meaning and purpose of Section 75-21-3 and shall be liable to the pains, penalties, fines, forfeitures, judgments and recoveries denounced against trusts and combines and shall be proceeded against in the manner and form provided as in the case of other trusts and combines under the terms of Chapter 21 of Title 75.

SOURCES: Codes, 1942, § 5104-41; Laws, 1964, ch. 300, eff from and after passage (approved April 9, 1964).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation deleted "Chapter 21, Title 75, Mississippi Code of 1972" following "Section 75-21-3" and the word "said" preceding "Chapter 21 of Title 75." The Joint Committee ratified the correction at its July 22, 2010, meeting.

STATE LIQUEFIED COMPRESSED GAS BOARD

SEC.

75-57-101. Creation of State Liquefied Compressed Gas Board; composition; general powers and duties; appointment, terms, compensation and removal of members; officers.
75-57-103. Employment of executive director and staff by Commissioner of Insurance.
75-57-105. Promulgation and enforcement of regulations by board; conduct of hearings by board.
75-57-107. Authority of board to impose penalties and take other disciplinary actions.
75-57-109. Establishment of system of permits for those engaged in the liquefied compressed gas business; issuance and revocation of permits; establishment of bonding, insurance and training requirements for permit holders.
75-57-111. Consistency of state and federal regulations.
75-57-113. Regulation of price, allocation of markets or terms and conditions of service.
75-57-115. Calibration of metering equipment in delivery vehicles used in dispensing liquefied compressed gas.
75-57-117. Judicial review.
75-57-119. Propane education and research program; establishment of fund; imposition of assessment; refunds; liability; promulgation of rules and regulations; use of funds collected; implementation upon affirmative election; notification requirements.

§ 75-57-101. Creation of State Liquefied Compressed Gas Board; composition; general powers and duties; appointment, terms, compensation and removal of members; officers.

(1) The State Liquefied Compressed Gas Board is hereby created and is vested with the power to regulate matters pertaining to liquefied compressed

gas. All regulations by and actions of the board are subject to the approval of the commissioner. The board shall not exercise administrative and enforcement duties. The Commissioner of Insurance shall retain all administrative and enforcement duties related to liquefied compressed gas. The board is established within the Department of Insurance and shall consist of seven (7) members appointed by the Commissioner of Insurance as follows:

(a) Five (5) members, one (1) from each of the congressional districts, to be selected from a list of at least ten (10) individuals who are in the liquefied compressed gas industry doing business in the State of Mississippi; the list shall be submitted, within ten (10) days of July 1, 1995, by licensed liquefied compressed gas distributors doing business in the state.

(b) Two (2) members from the state at large who have a rational relationship to the liquefied compressed gas industry.

(c) At least three (3) members of the board must be dealers who sell less than two million five hundred thousand (2,500,000) gallons of propane per year.

(d) No two (2) members may be selected from the same company.

(e) The members of the board as constituted on January 1, 2004, whose terms have not expired shall continue to serve until the expiration of their respective terms. As the terms of the members expire, the members shall be appointed as follows: one (1) member from each of the four (4) Mississippi congressional districts and three (3) members from the state at large. The appointments shall be made in the same manner and with the same qualifications and restrictions as provided in this subsection (1).

(2)(a) The initial appointments to the board from the congressional districts shall be made as follows: One (1) member of the board shall be appointed for a term ending on June 30, 1996; one (1) for a term ending on June 30, 1997; one (1) for a term ending on June 30, 1998; one (1) for a term ending on June 30, 1999; and one (1) for a term ending June 30, 2000. After the expiration of such initial terms, all subsequent appointments shall be made in the same manner as the original appointments were made for terms of five (5) years.

(b) The three (3) members from the state at large shall serve for terms concurrent with the term of the Commissioner of Insurance.

(c) An appointment to fill a vacancy, other than by expiration of a term of office, shall be made by the Commissioner of Insurance for the balance of the unexpired term.

(3) There shall be a chairman of the board elected by and from the membership of the board.

(4) Board members shall receive per diem compensation according to Section 25-3-69 and be reimbursed for travel expenses as provided in Section 25-3-41(1). The board members shall not be compensated for more than twelve (12) meetings per year held at a site within the state selected by the board. Any member who fails to attend three (3) consecutive called meetings of the board may be removed by the Commissioner of Insurance.

SOURCES: Laws, 1995, ch. 475, § 1; Laws, 2004, ch. 323, § 1; Laws, 2015, ch. 312, § 1; Laws, 2015, ch. 353, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 1 of ch. 312, Laws of 2015, effective from and after July 1, 2015 (approved March 13, 2015), amended this section. Section 1 of ch. 353, Laws of 2015, effective from and after July 1, 2015 (approved March 17, 2015), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 353, Laws of 2015, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date supersedes all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of subsection (4) by substituting "and be reimbursed for travel expenses" for "and for travel expenses." The Joint Committee ratified the correction at its August 17, 2015, meeting.

Amendment Notes — The first 2015 amendment (ch. 312), inserted "and be reimbursed for travel expenses as provided in Section 25-3-41(1)" in (4).

The second 2015 amendment (ch. 353), inserted "and be reimbursed for travel expenses as provided in Section 25-3-41(1)" in (4).

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 27, 32 et seq.

§ 75-57-103. Employment of executive director and staff by Commissioner of Insurance.

For the purpose of administering and enforcing the provisions of this chapter, the Commissioner of Insurance is empowered to employ an executive director and staff, within the Department of Insurance, as state service employees under the purview of the State Personnel Board's rules and regulations.

SOURCES: Laws, 1995, ch. 475, § 2, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 43 Am. Jur. 2d, Insurance §§ 27, 32 et seq.

§ 75-57-105. Promulgation and enforcement of regulations by board; conduct of hearings by board.

(1) The board shall promulgate and enforce regulations necessary for the administration of this chapter, and also setting forth the minimum general safety standards for the design, construction, location, installation and operation of equipment for storing, handling, transporting by tank truck or tank trailer and utilizing liquefied compressed gas for fuel purposes and for the odorization of liquefied compressed gas.

(2) The board's regulations shall be in substantial conformity with the published Standards of the National Fire Protection Association for the Storage and Handling of Liquefied Petroleum Gases (NFPA 58) and with the National Fuel Gas Code (NFPA 54) as recommended by the National Fire Protection Association, adopted in accordance with the Mississippi Administrative Procedures Law. The board shall consider the adoption of revised versions of these standards as they are adopted by the National Fire Protection Association; the board may consider the adoption of other standards for matters not addressed by the above standards or amend the above standards if deemed to be in the best interest of the State of Mississippi and with the approval of the Commissioner of Insurance.

(3) The board is authorized to hold hearings, call witnesses, administer oaths, take testimony and obtain evidence in the conduct of its business.

SOURCES: Laws, 1995, ch. 475, § 3; Laws, 2012, ch. 319, § 2, eff from and after passage (approved Apr. 5, 2012.)

§ 75-57-107. Authority of board to impose penalties and take other disciplinary actions.

The board is authorized to impose monetary penalties and take such other disciplinary actions as authorized by this chapter.

Any person found by the board in violation of this chapter or any regulations promulgated by the board shall be subject to the following civil penalties:

(a) For a first offense, a penalty not to exceed One Thousand Dollars ($1,000.00);

(b) For a second offense, a penalty not to exceed Three Thousand Dollars ($3,000.00); and

(c) For a third or subsequent offense, a penalty not to exceed Five Thousand Dollars ($5,000.00).

Any person who violates or remains in violation of the provisions hereof may be directed by written notice from the board, stating the facts of such violation, to correct the violation. The notice may be served personally or by U.S. Mail with return receipt requested to the principal office or the person or to their residence.

SOURCES: Laws, 1995, ch. 475, § 4, eff from and after July 1, 1995.

§ 75-57-109. Establishment of system of permits for those engaged in the liquefied compressed gas business; issuance and revocation of permits; establishment of bonding, insurance and training requirements for permit holders.

(1) The board may establish by regulation a system of permits for those engaged in the liquefied compressed gas business in the state. If adopted, and approved by the Commissioner of Insurance, no one may engage in the

liquefied compressed gas business without first having obtained a permit from the board. No person shall be denied a permit if he or she meets the requirements of state law.

(2) The board may revoke a liquefied compressed gas permit for willful violation of this chapter or the regulations or for failure to comply with the chapter or regulations. The revocation may be made only after written notice to the affected party, an opportunity to respond in writing to the charges and a hearing before the board under the provisions of the Administrative Procedures Act. The revocation shall be subject to the approval of the Commissioner of Insurance.

(3) The board may establish reasonable bonding, insurance limits and personnel training qualifications for permit holders. These requirements are subject to approval of the Commissioner of Insurance.

SOURCES: Laws, 1995, ch. 475, § 5, eff from and after July 1, 1995.

Cross References — Administrative Procedures Law, see § 25-43-1.101 et seq.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 1, 4, 5, 47.

CJS. 53 C.J.S., Licenses §§ 50-57.

§ 75-57-111. Consistency of state and federal regulations.

In order to increase compliance and to reduce the burden of regulation, the board shall seek consistency between its regulations and those regulations adopted by the departments and agencies of the United States Government.

SOURCES: Laws, 1995, ch. 475, § 6, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 144 et seq.

§ 75-57-113. Regulation of price, allocation of markets or terms and conditions of service.

No regulations may be issued affecting the price or allocation of liquefied compressed gas, allocation of markets between liquefied compressed gas suppliers or the terms and conditions of providing liquefied compressed gas service.

SOURCES: Laws, 1995, ch. 475, § 7, eff from and after July 1, 1995.

§ 75-57-115. Calibration of metering equipment in delivery vehicles used in dispensing liquefied compressed gas.

The board shall require that metering equipment in delivery vehicles used in dispensing of liquefied compressed gas shall be calibrated to an accuracy of a plus or minus tolerance of two percent (2%) at least once a year. This requirement shall not apply to delivery vehicles used in dispensing anhydrous ammonia. All retail stationary dispensing equipment with dispensing capabilities of less than fifty (50) gallons per minute shall be calibrated to an accuracy of a plus or minus tolerance of two percent (2%) every two (2) years. Certificates showing such calibration shall be kept at the dealer's place of business and shall be presented upon demand of the Commissioner of Insurance for inspection by the board. This section shall not apply to anhydrous ammonia dispensing equipment.

SOURCES: Laws, 1995, ch. 475, § 8, eff from and after July 1, 1995.

§ 75-57-117. Judicial review.

(1) Any individual aggrieved by a final decision of the board shall be entitled to judicial review.

(2) Any appeal from the board's decision shall be filed in the circuit court of the county where the board has its office. The appeal shall be filed within thirty (30) days after notification of the action of the board is mailed or served and the proceedings in circuit court shall be conducted as other matters coming before the court. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all costs, including the cost of preparation of the record of the proceedings before the board, and the filing of a bond in the sum of Five Hundred Dollars ($500.00) conditioned that if the action of the board be affirmed by the circuit court, the aggrieved party shall pay the costs of the appeal to the circuit court.

(3) The scope of review of the circuit court in such cases shall be limited to a review of the record made before the board to determine if the action of the board is unlawful for the reason that it was:

(a) Not supported by any substantial evidence;

(b) Arbitrary or capricious; or

(c) In violation of some statutory or constitutional right of the individual.

(4) No relief shall be granted based upon the court's finding of harmless error by the board in complying with the procedural requirements of this chapter. If there is a finding of prejudicial error in the proceedings, the cause may be remanded for a rehearing consistent with the findings of the court.

(5) Any party aggrieved by action of the circuit court may appeal in the manner provided by law.

SOURCES: Laws, 1995, ch. 475, § 9, eff from and after July 1, 1995.

§ 75-57-119. Propane education and research program; establishment of fund; imposition of assessment; refunds; liability; promulgation of rules and regulations; use of funds collected; implementation upon affirmative election; notification requirements.

(1) There is established a propane education and research program to be administered by the Department of Insurance through the State Liquefied Compressed Gas Board, created in Section 75-57-101, Mississippi Code of 1972, for the purpose of promoting the growth and development of the propane industry in Mississippi.

(2) There is created in the State Treasury a special fund to be designated as the "Mississippi Propane Education and Research Fund."

(3)(a) There is imposed and levied an assessment of One-tenth Cent (1/10¢) per gallon on compressed gas except for compressed natural gas or liquefied natural gas. The assessment may be increased by not more than One-tenth Cent (1/10¢) per gallon per year and the total assessment shall not exceed One-half Cent (½¢) per gallon.

(b) The assessment shall accrue at the same time and in the same manner as the tax levied on compressed gas under the provisions of Section 27-59-11(1), Mississippi Code of 1972. On or before the fifteenth day of each month the funds collected by the State Tax Commission during the previous month, less three and one-half percent (3-½%) of the gross amount collected, shall be deposited into the special fund created in subsection (2) of this section. The State Tax Commission may retain three and one-half percent (3-½%) of the funds collected under this section as administrative fees.

(c) Disbursements from the special fund created in subsection (2) of this section shall be made upon warrants issued by the State Fiscal Officer upon requisitions signed by the Commissioner of Insurance, or his designee, in the manner provided by law. Any interest earned by investing the proceeds in such special fund shall be credited to such special fund and shall not be deposited in the State General Fund. The State Fiscal Officer may issue warrants for the payment of monies from the special fund, upon requisition by the Commissioner of Insurance, or his designee, for refunds to dealers as provided in subsection (4) of this section.

(4) Any propane dealer may request and receive a refund of the amount of assessment remitted from the sale of propane if he makes a written application with the Department of Insurance by the end of each quarter in which the sales were made, supported by bona fide copies of tax reports. The application forms shall be prepared by the Department of Insurance and shall be available to all retailers. All such applications shall be processed and refunds paid by the Department of Insurance within sixty (60) days after the funds have been received by the department.

(5) At the end of each quarter, the Department of Insurance shall make available to the State Liquefied Compressed Gas Board all unencumbered funds collected under the provisions of this section. The Department of

Insurance may retain an amount not to exceed three and one-half percent (3-½%) of the funds collected under the provisions of this section as administrative fees.

(6)(a) Any person liable for the assessment shall be subject to the same requirements and penalties set forth for distributors under the provisions of Section 27-59-1 et seq., Mississippi Code of 1972.

(b) The State Tax Commission is hereby authorized and empowered to promulgate all rules and regulations necessary for the collection of the assessment.

(7) The State Liquefied Compressed Gas Board shall establish, with the approval of the Commissioner of Insurance, rules and regulations necessary to carry out the provisions of this section.

(8) The State Liquefied Compressed Gas Board may expend the proceeds collected under this section only on research and development of more cost effective uses of propane and on educational programs, safety programs and market development of propane.

(9) This section shall not be implemented until such time as the State Liquefied Compressed Gas Board conducts an election by all licensed propane dealers in this state. Each license holder shall have one (1) vote in such election. A ballot shall be sent to each license holder by certified mail. A majority of those ballots returned within thirty (30) days after the ballots are received by the propane dealers must be in the affirmative before this section is effective. An additional election may be held by the State Liquefied Compressed Gas Board at such time as approved by the Commissioner of Insurance.

(10) The State Liquefied Compressed Gas Board shall notify the State Tax Commission in writing of the imposition of the assessment and of any increase of the assessment. The imposition of the assessment and any increase of the assessment shall become effective on the first day of the second month succeeding the month in which the notice to impose or increase the assessment was given.

(11) The State Liquefied Compressed Gas Board shall notify the State Tax Commission in writing of the abatement or reduction of the assessment. The abatement or reduction of the assessment shall become effective on the last day of the month succeeding the month in which such notice was given.

SOURCES: Laws, 1996, ch. 429, § 1, eff from and after July 1, 1996.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected the spelling of "Liquefied" throughout this section. The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 497, 498.

63 Am. Jur. 2d, Products Liability §§ 698, 714, 744, 767, 779, 801.

CHAPTER 58

Mississippi Natural Gas Marketing Act

Sec.
75-58-1. Short title.
75-58-3. Legislative intent and purpose.
75-58-5. Applicability of chapter; safe harbor provision.
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75-58-19. Disclosure to third parties by non-operators of documents or information received from operators.
75-58-21. Effect of chapter upon pre-existing contractual rights and duties.

§ 75-58-1. Short title.

This chapter shall be known as "The Mississippi Natural Gas Marketing Act."

SOURCES: Laws, 1991, ch. 490, § 1, eff from and after July 1, 1991.

Cross References — State Oil and Gas Board generally, see § 53-1-1 et seq.
Utilization of oil and gas fields and pools, see § 53-3-101 et seq.
Federal Aspects — Natural Gas Act, see 15 USCS § 717 et seq.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 1 et seq.

9 Am. Jur. Legal Forms 2d, Gas and Oil, § 129:1 et seq.

§ 75-58-3. Legislative intent and purpose.

It is the intent and purpose of this chapter to protect the rights of all owners of natural gas wells and wells producing casinghead gas; to afford all such owners an opportunity to extract their fair share of gas; to provide that the operator of a well producing natural gas and a well producing casinghead gas shall market the gas of all owners thereof except the gas owned by an owner electing that the operator shall not market his gas; to hold operators acting in compliance with the provisions of this chapter harmless from any suit at law or in equity related hereto, and to provide that an operator shall be entitled to recover marketing expenses and transportation costs associated with the sale or transportation of an owner's gas. It is not the intent or purpose of this chapter to create and this chapter shall not be construed to create a partnership or association for state or federal taxation purposes.

SOURCES: Laws, 1991, ch. 490, § 2, eff from and after July 1, 1991.

§ 75-58-5. Applicability of chapter; safe harbor provision.

(a) **Applicability** — This chapter shall apply to all natural gas wells and wells producing casinghead gas in Mississippi which are permitted on and after July 1, 1991. This chapter shall also apply to wells in a pool unitized pursuant to Section 53-3-7 or Section 53-3-101 et seq., Mississippi Code of 1972, after July 1, 1991, and shall not be applicable to natural gas wells or wells producing casinghead gas in a pool unitized prior to July 1, 1991, unless the operator desires to comply with the chapter pursuant to Section 75-58-5(b). Nothing contained in this chapter shall prohibit or inhibit the unitization of a field or pool.

(b) **Safe Harbor Provision** — The operator of a well permitted prior to July 1, 1991, or the operator of a field or pool unitized prior to July 1, 1991, pursuant to Section 53-3-7 or Section 53-3-101 et seq., Mississippi Code of 1972, who desires to comply with the provisions of this chapter may bring such well or unitized field or pool within the provisions of this chapter by giving all non-operators notice of his intent to comply with the provisions of this chapter. Unless a non-operator so notified delivers to the operator's office a written notification rejecting such an offer to have the provisions of this chapter held applicable to his proportionate interest within thirty (30) days after the operator has placed such notice in the United States mail postage prepaid, the provisions of this chapter and all benefits accruing to an operator hereunder shall be deemed applicable to such non-operator's proportionate interest. Only the operator or successor operator of a well permitted prior to July 1, 1991, or field or pool unitized prior to July 1, 1991, may initiate such action as is necessary to bring such well or unitized field or pool within the provisions of this chapter. In no event shall this provision be deemed to affect any existing contract between the owners of a well or unitized field or pool.

SOURCES: Laws, 1991, ch. 490, § 3, eff from and after July 1, 1991.

Cross References — operator and non-operator defined, see § 75-58-7.

§ 75-58-7. Definitions.

For purposes of this chapter, the following terms shall have the meanings ascribed to them herein:

(a) "Board" shall mean the State Oil and Gas Board as created by Section 53-1-5 et seq., Mississippi Code of 1972.

(b) "Person" shall mean any individual, corporation, partnership, association, or any state, municipality, political subdivision of any state, or any agency department, or instrumentality of the United States, or any other entity, or any officer, agent, or employee of any of the above.

(c) "Oil" shall mean crude petroleum oil and all other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas.

(d) "Gas" shall mean all natural gas, whether hydrocarbon or nonhydrocarbon or any combination or mixture thereof, including hydrocarbons, hydrogen sulphide, helium, carbon-dioxide, nitrogen, hydrogen, casinghead gas, occluded natural gas from coal seams, and all other hydrocarbons not defined as oil in Section 75-58-7(c) above. For the purposes of this chapter only, the term gas shall not include gas which is consumed in operations on a well or which is vented or lost.

(e) "Operator" is defined as the party designated by the Board as the operator of the well.

(f) "Non-operator" shall mean an owner, as defined by Section 53-1-3, Mississippi Code of 1972, who is not designated as the operator.

(g) "Consenting non-operator" is defined as a non-operator who has affirmatively elected to have the operator market such non-operator's share of gas or is deemed to have consented to have the operator market such non-operator's share of gas.

(h) "Nonconsenting non-operator" is defined as a non-operator who has affirmatively elected to market his share of gas and not have the operator market his share of gas.

(i) "Net proceeds" is defined as the total amount of money received from the sale of gas, less (i) costs incident to marketing and transportation of gas incurred by the operator to third parties and (ii) severance, privilege, maintenance or other taxes measured on or by production.

(j) "Direct cost" is defined as a cost actually incurred by the operator in the marketing of gas from a well.

(k) "Balancing party" shall include operators and non-operators as defined in this chapter as well as other interest owners who have exercised a right to take production in kind.

(*l*) "Underproduction" shall mean the volumetric amount by which the volume of gas taken by a balancing party in any month is less than such party's entitlement for such month.

(m) "Overproduction" shall mean the volumetric amount by which the volume of gas taken by a balancing party in any month is greater than such party's entitlement for such month.

(n) "Cumulative underproduction" shall mean the total underproduction attributable to a balancing party, as adjusted so as to reflect any cash balancing as provided by Section 75-58-13(c), and any makeup gas taken for volumetric balancing.

(o) "Cumulative overproduction" shall mean the total overproduction attributable to a balancing party, as adjusted so as to reflect any cash balancing as provided by Section 75-58-13(c), and any makeup gas taken for volumetric balancing.

(p) "Underproduced party" shall mean a balancing party credited with cumulative underproduction.

(q) "Overproduced party" shall mean a balancing party charged with cumulative overproduction.

(r) "Makeup gas" shall mean the volume of gas an underproduced party is entitled to take for volumetric balancing, in addition to its entitlement.

(s) "Entitlement" shall mean a balancing party's percentage interest in the well multiplied by the well's actual production of gas.

(t) "Long-term contract" is a gas purchase agreement which contractually commits gas for a term greater than one (1) year from the date of initial deliveries of gas thereunder;

(u) "Short-term contract" is a gas purchase agreement other than a long-term contract;

(v) "Qualifying long-term contract" is an offer by a buyer of gas to enter into a long-term contract with consenting non-operators which contains the same (i) pricing conditions, (ii) buyer purchase obligations and (iii) expiration date as the long-term contract executed by the operator.

SOURCES: Laws, 1991, ch. 490, § 4, eff from and after July 1, 1991.

§ 75-58-9. Duties and responsibilities of operators marketing gas of non-operators; payments.

(a) On or before ten (10) days after the filing with the board of the initial test results for a gas well or oil well capable of producing gas in commercial quantities, the operator shall furnish, by United States mail, postage prepaid, a copy of the initial test results for the well filed with the board to all non-operators owning a record title interest in the production unit for such well as of a date not more than ninety (90) days prior to the filing with the board of the application to drill.

Upon furnishing the initial test results to all non-operators, the operator shall file with the board a list of all non-operators. Should the address of any non-operator be unknown to the operator after diligent search and inquiry, the operator shall so notify the Board, and any such non-operator shall be deemed for all purposes of this chapter as a consenting non-operator.

(b) The operator shall market the gas of all non-operators in a well subject to this chapter except as follows: (1) any non-operator (a "nonconsenting non-operator") who delivers a written notification to operator's office within thirty (30) days after the mailing to such non-operator the test results required by subsection (a) of this section that such non-operator will be responsible for and will market its share of gas and (2) as otherwise provided herein. After the thirty (30) day notice period has expired, operator shall send a notice to the board identifying which non-operators have elected to be or have been deemed to be consenting non-operators and which non-operators have elected to be nonconsenting non-operators. The operator shall have no obligation to market the gas attributable to any nonconsenting non-operator.

(c) In fulfilling operator's responsibility to market consenting non-operator's gas pursuant to subsection (b) of this section, operator has the continuing option of marketing consenting non-operator's share of gas pursuant to a short-term contract or submitting a qualifying long-term contract to the consenting non-operators.

Should operator desire to market consenting non-operators' share of gas under a long-term contract in a well which is subject to this chapter on or after the date upon which the application to drill the well is filed with the board, operator shall submit by United States mail, postage prepaid, to the consenting non-operators a qualifying long-term contract. Should a consenting non-operator not accept such offer by executing and delivering to the operator at operator's office the qualifying long-term contract within thirty (30) days after the date that operator placed the qualifying long-term contract in the United States mail, then and in such event, the offer to purchase shall be deemed to have expired and such consenting non-operator shall be deemed to have become a non-consenting non-operator at the expiration of such thirty (30) day period, and operator shall thereafter have no further obligation to market the gas owned by that consenting non-operator. The operator shall furnish to the buyer the qualifying long-term contract executed by the consenting non-operators, and shall furnish to the Board a notice designating those consenting non-operators which have become nonconsenting non-operators. Save and except where the buyer of gas is contractually obligated to operator to offer a qualifying long-term contract to the consenting non-operators, nothing herein contained shall be deemed to constitute an obligation on the part of any buyer of gas to offer a qualifying long-term contract. This chapter shall not be construed to enlarge or alter in any way any purchaser's obligations under any gas purchase contract.

In marketing consenting non-operator's share of gas under a short-term contract, operator shall market the gas of the consenting non-operators upon such terms and conditions as a reasonably prudent operator would market such gas; provided, however, that in fulfilling such obligation, operator shall incur no liability to the consenting non-operator save and except as to acts of willful misconduct or gross negligence. In the event operator intends to market consenting non-operator's share of gas under a short-term contract with an affiliate or subsidiary of operator, operator shall so notify the consenting non-operators.

(d) Any consenting non-operator shall have the right to become a nonconsenting non-operator by delivering to operator a written notice thereof at least sixty (60) days prior to any yearly anniversary of the date that the operator filed the initial test results with the Board. Such an election shall become effective on the later to occur of: (i) the next anniversary of the date that the operator filed the initial test results with the Board, or (ii) the expiration date of the gas purchase agreement then covering the consenting non-operator's share of gas. Operator shall thereafter have no further obligation to market the gas owned by any consenting non-operator electing to become a nonconsenting non-operator. Operator shall furnish to the Board a notice identifying any consenting non-operator who has elected to become a nonconsenting non-operator.

(e) Should a change of operator occur with respect to a well which is subject to this chapter, the successor operator shall furnish to all consenting non-operators within thirty (30) days after assuming operations of such well a notice of change of operator.

Any consenting non-operator shall have the right to become a nonconsenting non-operator by furnishing to the successor operator a written notice advising the successor operator of same within thirty (30) days after the operator places in the United States mail, postage prepaid, the notice required by this subsection (e), with such consenting non-operator to become a nonconsenting non-operator effective on the later to occur of (i) the expiration date of the gas purchase agreement then covering such consenting non-operator's share of gas, or (ii) the first day of the second month after the date of the consenting non-operator's written notice to the successor operator. Operator shall send a notice to the Board identifying any consenting non-operators who have elected to become nonconsenting non-operators.

As to the remaining consenting non-operators, the successor operator shall market the gas of such consenting non-operators in accordance with the terms and provisions of this chapter.

(f) The net proceeds from the sale of the consenting non-operator's share of gas production shall be paid by the buyer to the operator. The operator shall not be responsible for the payment of any taxes or encumbrances with respect to the net proceeds except as specifically provided herein. The operator shall pay, for and on behalf of itself and the consenting non-operators, any severance, privilege and/or maintenance taxes due on the production of gas marketed by the operator. Save and except as otherwise provided in this chapter, or by law, the net proceeds derived from the first sale of the consenting non-operator's share of gas shall be paid by the operator to the consenting non-operators within one hundred twenty (120) days after the date of receipt by the operator of the net proceeds derived for such first sale of production, and thereafter no later than sixty (60) days after the date of receipt by the operator of the net proceeds for subsequent production of the consenting non-operator's share of gas. Save and except as provided by Section 53-3-7, Mississippi Code of 1972, the consenting non-operators shall be and shall remain responsible for the payment of any proceeds due any royalty, overriding royalty and/or production payment which burden and/or encumber the interest of such consenting non-operators, and the operator shall have no liability to any owner of royalty, overriding royalty and/or production payment which burdens and/or encumbers the interest of the non-operators where the operator pays the net proceeds derived from the sale of the consenting non-operator's share of gas as herein provided. The operator and the consenting non-operators shall have no liability to any owner of royalty, overriding royalty and/or production payment which burdens and/or encumbers the interest of the nonconsenting non-operators.

(g) A non-operator's rights under this chapter shall not be affected by his status as a consenting or nonconsenting owner under Section 53-3-7, Mississippi Code of 1972; provided, however, during any period of the recovery of cost or alternate charges, the share of production from the pooled unit well attributable to the nonconsenting owner's nonconsenting interests therein shall be delivered to his purchaser or market, if any, with the proceeds received therefrom to be paid by the purchaser to the operator for the account of the operator and the appropriate consenting owners; if, however, the nonconsenting owner does not have a purchaser or market which is taking the production, then such share of production shall be sold by the operator to the operator's purchaser or market, with the proceeds received therefrom to be paid by the purchaser to the operator for the account of the operator and the appropriate consenting owners.

SOURCES: Laws, 1991, ch. 490, § 5, eff from and after July 1, 1991.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed "Section 75-58-9(a)" to "subsection (a) of this section" in subsection (b), changed "Section 75-58-9(b)" to "subsection (b) of this section" in subsection (c), and changed "Section 75-58-9(e)" to "this subsection (e)" in the second paragraph of subsection (e). The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Rate of interest, and institution of interpleader action by operator exposed to multiple liability in payment of net proceeds, see § 75-58-15.

Right of operators and non-operators to enter into private agreements relating to matters provided for in chapter, see § 75-58-17.

§ 75-58-11. Duties, responsibilities, etc. of operators and non-operators; relationship between operators and non-operators.

(a) Each consenting non-operator shall be responsible for and shall pay to the operator that consenting non-operator's share of direct and actual marketing expenses relating to the marketing of consenting non-operator's gas, including, but not limited to, capital expenses, third-party transportation costs, pipeline penalties, fines, refunds, reimbursements, adjustments, direct costs, and contractual liabilities to third parties. Consenting non-operators shall not be liable for damages resulting from operator's gross negligence or willful misconduct in fulfilling operator's obligations under this chapter. Nothing in this chapter shall be construed so as to impose any liability upon consenting non-operators except as provided by this chapter. In addition, each consenting non-operator shall pay to operator a marketing fee in an amount equal to two and one-half percent (2-½%) of consenting non-operator's monthly net proceeds; provided, however, the sum of all marketing fees received by operator from all consenting non-operators in a well shall not exceed Five Hundred Dollars ($500.00) per month, per well, as adjusted for inflation as herein provided. If the sum of the marketing fee, when based upon the above percentage of net proceeds, would exceed the limitation herein provided, as adjusted for inflation, then each consenting non-operator's marketing fee shall be determined by dividing its percentage ownership in the well by the total percentage ownership of all consenting non-operators in that well, and multiplying the resultant number by the currently effective well limitation. The well limitation of Five Hundred Dollars ($500.00) per month, per well shall be effective through January 31, 1993. On February 1, 1993, and each February 1 thereafter, the well limitation shall be adjusted for inflation by dividing the Consumer Price Index for All Urban Consumers (as published by the United States Department of Labor) for the prior calendar year by the same Consumer Price Index for calendar year 1991, and multiplying the resultant number by Five Hundred Dollars ($500.00). This calculation shall be performed and results published by the Mississippi Oil and Gas Board. At the election of operator, operator may deduct the marketing fees prior to paying the net proceeds to the consenting non-operators, or operator may submit invoices to the consenting non-operators for the marketing fees.

(b) If the operator has obtained a transportation contract with a third party prior to the date on which the application to drill is filed with the board and said contract contains a capacity or volume limitation, then the operator has the option of (1) having the consenting non-operator participate in this preexisting transportation contract (however, if the preexisting transportation contract contains a discount to the operator which is not generally available, then the operator may charge the consenting non-operator the undiscounted transportation tariff applicable to the transaction) or (2) make a good faith effort to secure a separate transportation contract for consenting non-operator's share of gas. If the operator has obtained a transportation contract with a third party prior to the date on which the application to drill is filed and said contract contains a provision which prevents operator from shipping consenting non-operator's gas under that transportation contract, then operator shall make a good faith effort to secure a separate transportation contract for consenting non-operator's share of gas. If the operator secures a separate transportation contract for consenting non-operator's share of gas, then consenting non-operator shall be liable to the operator for the actual cost of securing the separate transportation contract.

(c) This chapter shall not be construed as imposing fiduciary duties upon an operator marketing the gas of a consenting non-operator or creating a fiduciary relationship between the operator and a consenting non-operator.

(d) An operator shall in no event be held liable to any non-operator for any liability, damage, loss, cost or expense relating to the marketing of gas resulting from or arising out of any act or omission of the operator when the operator is acting in compliance with the terms and conditions of this chapter, except in the case of fraud, gross negligence or willful misconduct on the part of operator.

(e) Any sums due under this chapter from consenting non-operators to operator shall be paid to operator within thirty (30) days after receipt of demand from operator. In addition to the rights of the operator to collect all sums due, the operator has the right to deduct from the net proceeds received for any consenting non-operator's share of gas produced from a well, any amount owed with respect to that well by that consenting non-operator by virtue of this chapter.

SOURCES: Laws, 1991, ch. 490, § 6, eff from and after July 1, 1991.

Cross References — Responsibility of parties for production costs and expenses, see § 75-58-13.

Rate of interest on payments required, see § 75-58-15.

Right of operators and non-operators to enter into private agreements relating to matters provided for in chapter, see § 75-58-17.

§ 75-58-13. Gas imbalances; operator statements; cash balancing; oil and other minerals; costs and expenses; deliverability tests.

(a) **Gas Imbalances** — Notwithstanding anything to the contrary in this section, if any balancing party takes and disposes of less than its entitlement during any calendar month, then the volume not taken by such party may be taken by any other party or parties as allocated by the operator.

(b) **Operator Statements** — Not less frequently than quarterly, the operator shall furnish the balancing parties a written statement showing (a) the total volume of gas taken by each party during the month or months being reported; (b) the makeup gas taken by each party during the month or months; (c) the cumulative volume of gas taken by each party as of the end of that month or months; and (d) the cumulative overproduction or cumulative underproduction, if any, of each party for the time period being reported, as adjusted by any cash balancing as provided by Section 75-58-13(c). The operator statement shall be current as of the production month which falls two (2) months prior to the time the operator statement is issued. Makeup gas taken by an underproduced party shall be credited to the account of the underproduced party in the order of accrual of underproduction.

(c) **Cash Balancing** — Any overproduced party has the right, but not the obligation, exercisable not more frequently than once a year, to cash balance its cumulative overproduction with underproduced parties. After permanent cessation of production, each overproduced party shall be required to cash balance with underproduced parties. In order to cash balance, the overproduced party shall first furnish a statement to the underproduced parties and to the operator showing the volume and value of the cumulative overproduction, based upon the net proceeds actually received by the overproduced party for the cumulative overproduction, less (i) two and one-half percent (2-½%) of the net proceeds received by the overproduced party for the cumulative overproduction, and (ii) the direct and actual marketing expenses and transportation costs attributable to the cumulative overproduction. Within sixty (60) days after issuance of the statement as described above, the overproduced party shall pay each underproduced party in accordance with the statement and without interest. To the extent any values used to calculate a cash settlement hereunder are subject to a refund by the overproduced party pursuant to law, regulation or governmental order, the underproduced party receiving such cash settlement shall, prior to payment thereof, agree in writing to indemnify the overproduced party against the underproduced party's proportionate part of any refund, including interest which the overproduced party shall be required to make.

(d) **Volumetric Balancing** — Each underproduced party shall have the right to take makeup gas during a month after first giving the operator and all other non-operators written notice at least fifteen (15) days before the beginning of a calendar month.

The right of all underproduced parties to take makeup gas shall be limited to the lesser of (1) ten percent (10%) of the overproduced party's entitlement of gas or (2) fifty percent (50%) of the underproduced party's interest in the well. If two or more underproduced parties desire to take makeup gas during the same month and the combined volume they desire to take exceeds the volume available as makeup gas, then the underproduced parties shall share the makeup gas in proportion to their cumulative underproduction. In no event shall any overproduced party be allocated less than ninety percent (90%) of that overproduced party's entitlement. Makeup gas taken by an underproduced party shall be credited to the account of the underproduced party in the order of accrual of underproduction.

(e) **Oil and Other Minerals** — Regardless of the volume of gas actually taken by any balancing party, such party shall share in the production of oil, condensates and other minerals separated in the facilities operated for the production of oil and gas from the well. Operator and non-operators shall share in and own the production of all oil as produced and saved, notwithstanding such party's status as an overproduced party or underproduced party.

(f) **Costs and Expenses** — Regardless of the volume of gas actually taken by any balancing party, such party shall bear costs and expenses as otherwise provided in agreements between the parties or as provided by law.

(g) **Deliverability Tests** — At the request of any balancing party, operator shall, subject to operational constraints, produce the entire well stream for a deliverability test not to exceed seventy-two (72) hours in duration if required under such requesting party's gas purchase agreement. The gas produced and delivered during such deliverability test shall be allocated to the balancing parties on the basis of their entitlement, provided, however, that should any purchaser of gas owned by the balancing parties not requesting such deliverability test fail or refuse to accept such gas or any part thereof, then and in such event, the gas not so taken shall be allocated as overproduction to the balancing party requesting the deliverability test.

SOURCES: Laws, 1991, ch. 490, § 7, eff from and after July 1, 1991.

Cross References — Application of this section to definitions of "cumulative underproduction" and "cumulative overproduction", see § 75-58-7.

Responsibility of parties for marketing costs and expenses, see § 75-58-11.

Rate of interest and institution of interpleader action by party exposed to multiple liability in payment of proceeds for cash balancing, see § 75-58-15.

Right of operators and non-operators to enter into private agreements relating to matters provided for in chapter, see § 75-58-17.

§ 75-58-15. Interest of payments; interpleader actions; jurisdiction over disputes.

(a) **Interest** — Should any person fail to make any payment required under this chapter when the same is due, interest shall accrue at the rate of twelve percent (12%) per annum from the date due until paid, provided, however, should operator fail to remit payment of net proceeds to any consenting non-operator within the time herein provided because the title of such consenting non-operator is not marketable, the rate of interest as to the net proceeds attributable to such consenting non-operator shall be five percent (5%) accruing from the date when due until the title is rendered marketable. Marketability of title shall be determined in accordance with the then current legally recognized real property law governing title to oil and gas interests. Where the title to a balancing party's interest is not marketable, and where all the claimants to such interest are not consenting non-operators, operator may refuse to produce and deliver any gas attributable to such interest until such time as the title is rendered marketable. Gas attributable to such interest shall be allocated as underproduction.

(b) **Interpleader** — An operator shall have the right to initiate an action of interpleader where the operator may be exposed to double or multiple liability in the payment of net proceeds. Upon deposit with the court of the net proceeds plus accrued interest thereon as of the date of such deposit as provided by this chapter, operator shall thereafter be relieved of all liability relating to the net proceeds and accrued interest so deposited with the court. Operator shall be entitled to deduct and/or receive from the net proceeds and accrued interest all reasonable costs incurred by operator in such action of interpleader. An overproduced party desiring to cash balance shall also have the right to initiate an action of interpleader where such overproduced party may be exposed to double or multiple liability in the payment of proceeds for cash balancing. Upon deposit with the court of the proceeds for cash balancing, such overproduced party shall thereafter be relieved of all liability relating to such proceeds so deposited with the court. The overproduced party shall be entitled to deduct and/or receive from the proceeds for cash balancing all reasonable costs incurred by such overproduced party in such action of interpleader.

(c) **Jurisdiction Over Disputes** — Jurisdiction and venue for any proceeding brought pursuant to this chapter shall be in the Chancery Court of the First Judicial District for Hinds County, Mississippi, or in the chancery court of any county in which all or part of the unit for the well is situated.

SOURCES: Laws, 1991, ch. 490, § 8, eff from and after July 1, 1991.

§ 75-58-17. Right of operators and non-operators to enter into private agreements; effect of agreements.

Nothing in this chapter shall be construed to limit the right of operators and non-operators to enter into agreements providing for marketing of gas, marketing fees, balancing or any other matter addressed by this chapter. Any such valid agreement shall supersede the provisions of this chapter to the extent said agreement addresses matters covered in this chapter.

SOURCES: Laws, 1991, ch. 490, § 9, eff from and after July 1, 1991.

§ 75-58-19. Disclosure to third parties by non-operators of documents or information received from operators.

All non-operators who receive information relating to a gas purchase agreement from an operator in connection with or as required by this chapter shall hold and treat each document as confidential and shall not disclose such documents or the terms thereof to third parties, except those persons required to see said documents in order to decide whether a non-operator should become a consenting non-operator or nonconsenting non-operator. The provisions of this Section 75-58-19 shall have no application to any gas purchase agreement executed by the non-operator.

SOURCES: Laws, 1991, ch. 490, § 10, eff from and after July 1, 1991.

§ 75-58-21. Effect of chapter upon pre-existing contractual rights and duties.

This chapter does not affect contractual rights and duties existing before July 1, 1991.

SOURCES: Laws, 1991, ch. 490, § 11, eff from and after July 1, 1991.

CHAPTER 59

Correspondence Courses

SEC.
75-59-1. Permit required; application; fees; bonds; suits.
75-59-3. Disposition of fees.
75-59-5. Revocation of permit; notice and hearing; appeals; suit by persons failing to comply with chapter.
75-59-7. State superintendent of education to consult with Secretary of State; rules and regulations.
75-59-9. Penalties.

§ 75-59-1. Permit required; application; fees; bonds; suits.

No person, firm or corporation shall contract to furnish correspondence courses to persons within the state unless such person, firm or corporation shall have obtained a permit from the office of the Secretary of State, either (a) the State Department of Education, (b) the Mississippi Community College Board, or (c) the Board of Trustees of State Institutions of Higher Learning, whichever is appropriate, and the Office of the Attorney General. An application for a permit shall be made on forms furnished by the Secretary of State, the State Department of Education, the Mississippi Community College Board or the Board of Trustees of Institutions of Higher Learning, as the case may be, and the Attorney General and such application shall designate an agent for the service of summons within the state; shall contain the name and address of the applicant; the type of courses offered with a brief summary of the course of studies offered; and one (1) copy of all textbooks or other teaching aids and training materials which are incorporated in the course of study shall be filed with said application. The applicant shall pay the Secretary of State a fee of Two Hundred Fifty Dollars ($250.00). The applicant shall file a bond with his application in the sum of Fifty Thousand Dollars ($50,000.00) conditioned to satisfy any judgment rendered by a court of competent jurisdiction, in favor of any person who has sustained damages as a result of the breach of a contract of instruction by the permittee. Such bond shall be executed by the permittee and a resident surety company qualified to transact business within the state. Such permit shall be valid for one (1) year from the date thereof. Suits against the permittee and his surety may be brought in the county where the plaintiff resides, or the county where the defendant has his principal place of business, or where his resident agent resides. This chapter shall not apply to any business school or business college holding a current certificate or license issued under the applicable law of this state. In addition, this chapter shall not apply to religious instructions offered by a recognized church denomination; provided, however, that no fee or charge of any kind whatever may be levied or collected directly or indirectly for such instructions or certificates issued in connection therewith or incidental thereto. No person shall be granted a permit unless he is an individual of good moral character.

SOURCES: Codes, 1942, § 4228-01; Laws, 1962, ch. 380, § 1; Laws, 1970, ch. 354, § 1; Laws, 1975, ch. 387; Laws, 1976, ch. 354; Laws, 1998, ch. 334, § 5; Laws, 2014, ch. 397, § 64, eff from and after July 1, 2014.

RESEARCH REFERENCES

Am Jur. 4B Am. Jur. Legal Forms 2d, Colleges and Universities § 60:173 (contract for distribution of extension course material).

16A Am. Jur. Legal Forms 2d (Rev), Schools, Form 229:417 (correspondence school; contract for instruction).

CJS. 15 C.J.S., Commerce § 72, 98, 102, 103, 108.

§ 75-59-3. Disposition of fees.

The fees collected under the provisions of this chapter shall be used in the processing and filing of said application and in the administration and enforcement of the chapter.

SOURCES: Codes, 1942, § 4228-02; Laws, 1962, ch. 380, § 2, eff from and after July 1, 1962.

§ 75-59-5. Revocation of permit; notice and hearing; appeals; suit by persons failing to comply with chapter.

(a) For a violation of a contract with a student, for soliciting or enrolling students through fraud or misrepresentation, or for noncompliance with this chapter or the reasonable rules and regulations promulgated by the Secretary of State pursuant to this chapter, the Secretary of State shall revoke the permit issued under this chapter after serving notice of hearing upon the resident agent for service of summons in the same manner as service of summons upon nonresident corporations qualified to do business in the state. Such notice shall set a time and place for a hearing not less than fifteen (15) days nor more than thirty (30) days from the receipt of said notice. Said permittee shall be allowed to show cause why said permit should not be revoked. At said time and place full opportunity shall be afforded the permittee to be heard on said revocation. The Secretary of State shall have power to issue compulsory process to assure the presence of such persons or such records deemed necessary for the proper determination of any matter before him for consideration, and he may in his discretion require testimony under oath and administer the same.

(b) Any person aggrieved by a decision of the Secretary of State shall have a right to a judicial review of said decision by forwarding notice of his intention to appeal to the Secretary of State within fifteen (15) days from the date of revocation. Upon receipt of said notice, the Secretary of State shall within sixty (60) days after receiving said notice of appeal certify the record to the chancery court of the First Judicial District of Hinds County, Mississippi, for trial de novo. Appeal may be with or without supersedeas at the election of the permittee. The Secretary of State shall not be required to certify the record unless the permittee shall have filed a cost bond sufficient to pay the costs of transcribing and preparing the transcript.

No person, firm or corporation failing to comply with the provisions of this chapter shall have access to any of the courts of this state for the purpose of enforcing any claim or demand against any resident of this state arising out of any contract entered into in violation of the provisions of this chapter.

SOURCES: Codes, 1942, § 4228-03; Laws, 1962, ch. 380, § 3; Laws, 1970, ch. 355, § 1, eff from and after passage (approved April 3, 1970).

§ 75-59-7. State superintendent of education to consult with Secretary of State; rules and regulations.

The state superintendent of education shall consult with the Secretary of State and the Secretary of State is hereby empowered, authorized, and directed to make reasonable rules and regulations to implement the general purposes of this chapter.

SOURCES: Codes, 1942, § 4228-04; Laws, 1962, ch. 380, § 4, eff from and after July 1, 1962.

Cross References — Duties of superintendent of public education, generally, see § 37-3-11.

§ 75-59-9. Penalties.

Any person violating the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of five hundred dollars ($500.00) or by imprisonment of not more than six (6) months, or by both such fine and imprisonment.

SOURCES: Codes, 1942, § 4228-05; Laws, 1962, ch. 380, § 5; Laws, 1970, ch. 355, § 2, eff from and after passage (approved April 3, 1970).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 60

Proprietary Schools and Colleges

SEC.
75-60-1. Title.
75-60-3. Definitions.
75-60-4. Commission on Proprietary School and College Registration; staffing; purpose of commission; levying and collection of fees.
75-60-5. Exemption of certain courses and institutions.
75-60-7. Disposition of receipts.
75-60-9. Certificate of registration required.
75-60-11. Issuance of certificate of registration; registration number.
75-60-13. Issuance of certificate of registration under federal law in certain cases.
75-60-15. Certificate of registration; fees; registration of new course offerings; school franchises.
75-60-17. Surety bond or deposit for certificate of registration.
75-60-18. Tuition and fee refund policies.
75-60-19. Suspension, revocation or cancellation of certificate of registration; complaints; investigations; hearing procedures; subpoenas; decision after hearing; civil penalties and administrative sanctions; appeals.
75-60-21. Injunctive relief against unregistered activity.
75-60-23. Agent permit required.
75-60-25. Issuance of agent permit.
75-60-27. Agent permit fees.
75-60-29. Surety bond for agent permit.
75-60-31. Good moral character prerequisite to issuance of agent permit.
75-60-33. Revocation of agent permit.
75-60-35. Existence of surety bond not to impair other right of recovery; recovery on contract barred if agent not holder of agent permit.
75-60-37. Agent permit not to constitute approval of any program of instruction.
75-60-39. Penalties.
75-60-41. When certificate and permit provisions shall take effect.
75-60-43. Records, regulations, and forms to be provided by State Department of Education; validity of certificates and permits issued by Department.
75-60-45. Review and evaluation of qualifications of instructors; minimum qualifications for instructors.

Editor's Note — Laws of 1992, ch. 349, § 25, provided for the repeal of this chapter effective July 1, 1994. Subsequently, Laws of 1994, ch. 375, § 1, amended Laws of 1992, ch. 349, § 25, to delete the automatic repeal provision.

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§ 75-60-1. Title.

This chapter shall be known as the "Mississippi Proprietary School and College Registration Law."

SOURCES: Codes, 1942, § 6688-01; Laws, 1972, ch. 507, § 1; Laws, 1974, ch. 441, § 1; brought forward, Laws, 1992, ch. 349, § 1, eff from and after July 1, 1992.

Cross References — Education, generally, §§ 37-1-1 et seq.

Proprietary schools and colleges subject to regulation under §§ 75-60-1 et seq. are not subject to the authority of the Commission on College Accreditation, see § 37-101-241.

RESEARCH REFERENCES

ALR. Regulation and licensing of correspondence schools or their canvassers or solicitors. 92 A.L.R.2d 522.

§ 75-60-3. Definitions.

As used in this chapter:

(a) "Course of instruction" means the offering of instruction to individuals for a charge, fee or contribution of any kind, to a person or persons for the purpose of training or preparing such person(s) for a field of endeavor in a business, trade, technical or industrial occupation.

(b) "Program of study" means a series of individual courses in an area of specialization for which a diploma, degree, certificate or other written evidence of proficiency or achievement is offered.

(c) "Agent" means any person employed by an institution licensed by the commission, regardless of job title, job description, full-time or part-time employment status, who either directly or indirectly influences the decision of any prospective student to enroll for a fee in a course of instruction.

(d) "Person" means an individual, corporation, partnership, association or any other type of organization.

(e) "Board" means the Mississippi Community College Board established in Section 37-4-3 et seq., Mississippi Code of 1972.

(f) "Commission" means the Commission on Proprietary School and College Registration established under this chapter.

(g) "Correspondence education" means a formal educational process under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and the student is limited, is not regular and substantive, and is primarily initiated by the student; courses are typically self-paced.

(h) "Distance education" means a formal educational process in which the majority of the instruction (interaction between students and instructors and among students) in a course occurs when students and instructors are not in the same place. Instruction may be synchronous or asynchronous. A distance education course may use the Internet; one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite or wireless communications devices; audio conferencing; or video cassettes, DVDs and CD-ROMs if used as part of the distance learning course or program.

(i) "General education course" means a unit of learning that is nontechnical in nature and is a fundamental part of a program. The content is drawn from oral and written communications, social studies, mathematics, natural sciences and the humanities.

(j) "Nontechnical course" means a unit of learning that is nontechnical in nature and includes general education courses, basic/college life skills and other related courses.

(k) "Occupational degree" means a credential awarded by a school upon successful completion of an associate degree program. This program shall contain a minimum of sixty percent (60%) technical course credits/clock hours.

(*l*) "Institution" means a proprietary school, career college, school person or other organization that offers programs that require registration in accordance with Section 75-60-5.

(m) "Technical course" means a unit of learning that yields skills, knowledge and understanding essential to the specific occupation for which the program is designed.

SOURCES: Codes, 1942, § 6688-02; Laws, 1972, ch. 507, § 2; Laws, 1974, ch. 441, § 2; Laws, 1992, ch. 349, § 2; Laws, 1993, ch. 446, § 1; Laws, 2013, ch. 333, § 1, eff from and after July 1, 2013.

§ 75-60-4. Commission on Proprietary School and College Registration; staffing; purpose of commission; levying and collection of fees.

(1) The Mississippi Community College Board shall appoint a "Commission on Proprietary School and College Registration" to be composed of five (5) qualified members, one (1) appointed from each of the five (5) Mississippi congressional districts existing on January 1, 1992. The membership of said commission shall be composed of persons who have held a teaching, managerial or other similar position with any public, private, trade, technical or other school; provided, however, that one (1) member of the commission shall be actively engaged in, or retired from, teaching, managerial or other similar position with a privately owned trade, technical or other school. The membership of said commission shall be appointed by the board within ninety (90) days of the passage of this chapter. In making the first appointments, two (2) members shall be appointed for three (3) years, two (2) members for four (4) years, and one (1) member for five (5) years. Thereafter, all members shall be appointed for a term of five (5) years. If one (1) of the members appointed by the board resigns or is otherwise unable to serve, a new member shall be appointed by the commission to fill the unexpired term. All five (5) members of the commission have full voting rights. The members shall not be paid for their services, but may be compensated for the expenses necessarily incurred in the attendance at meetings or in performing other services for the commission at a rate prescribed under Section 25-3-69, Mississippi Code of 1972, plus actual expenses and mileage as provided by Section 25-3-41, Mississippi Code of 1972. Members of the commission shall annually elect a chairman from among its

members who is not actively engaged with a privately owned trade or technical school.

(2) The Mississippi Community College Board shall appoint such staff as may be required for the performance of the commission's duties and provide necessary facilities.

(3) The Mississippi Community College Board shall levy only fees authorized in this chapter only in such amounts as may be required for the performance of the commission's duties.

(4) In addition to the fees authorized in this chapter, the Mississippi Community College Board is authorized to levy and collect fees from proprietary schools and colleges (a) to recover the cost of audits, investigations and hearings relating to such institutions, and (b) to recover the cost of activities conducted under Section 73-15-25 relating to the accreditation of practical nursing programs.

(5) It shall be the purpose of the Commission on Proprietary School and College Registration to establish and implement the registration program as provided in this chapter. All controversies involving the registration of such schools shall be initially heard by a duly authorized hearing officer of the commission before whom a complete record shall be made. After the conclusion of the hearing, the duly authorized hearing officer of the commission shall make a recommendation to the commission as to the resolution of the controversies, and the commission, after considering the transcribed record and the recommendation of its hearing officer, shall make its decision which becomes final unless the school or college or other person involved shall appeal to the Mississippi Community College Board, which appeal shall be on the record previously made before the commission's hearing officer except as may be provided by rules and regulations adopted by the Mississippi Community College Board. All appeals from the Mississippi Community College Board shall be on the record and shall be filed in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

SOURCES: Laws, 1992, ch. 349, § 3; Laws, 1993, ch. 446, § 2; Laws, 2011, ch. 478, § 1; Laws, 2013, ch. 333, § 2, eff from and after July 1, 2013.

Cross References — Payment of expenses of members of the Commission on Proprietary School and College Registration, see § 75-60-4.

Right to appeal, under this section, penalty or administrative sanction imposed under Mississippi Proprietary School and College Registration Law, see § 75-60-19.

§ 75-60-5. Exemption of certain courses and institutions.

The provisions of this chapter do not apply to the following categories of courses, schools or colleges:

(a) Tuition-free courses or schools conducted by employers exclusively for their own employees;

(b) Schools, colleges, technical institutes, community colleges, junior colleges or universities under the jurisdiction of the Board of Trustees of

State Institutions of Higher Learning or the Mississippi Community College Board;

(c) Schools or courses of instruction under the jurisdiction of the State Board of Cosmetology, State Board of Barber Examiners, the State Board of Massage Therapy or the State Board of Nursing;

(d) Courses of instruction required by law to be approved or licensed, or given by institutions approved or licensed, by a state board or agency other than the Commission on Proprietary School and College Registration; however, a school so approved or licensed may apply to the Commission on Proprietary School and College Registration for a certificate of registration to be issued in accordance with the provisions of this chapter;

(e) Correspondence education;

(f) Nonprofit private schools offering academic credits at primary or secondary levels, or conducting classes for exceptional education as defined by regulations of the State Department of Education;

(g) Private nonprofit colleges and universities or any private school offering academic credits at primary, secondary or postsecondary levels;

(h) Courses of instruction conducted by a public school district or a combination of public school districts;

(i) Courses of instruction conducted outside the United States;

(j) A school that offers only instruction in subjects that the Commission on Proprietary School and College Registration determines are primarily for a vocational, personal improvement or cultural purposes and that does not represent to the public that its course of study or instruction will or may produce income for those who take that study or instruction;

(k) Courses conducted primarily on an individual tutorial basis, where not more than one (1) student is involved at any one time, except in those instances where the Commission on Proprietary School and College Registration determines that the course is for the purpose of preparing for a vocational objective;

(*l*) Kindergartens or similar programs for preschool-age children.

SOURCES: Codes, 1942, § 6688-03; Laws, 1972, ch. 507, § 3; Laws, 1974, ch. 441, § 3; Laws, 1976, ch. 319; Laws, 1986, ch. 432, § 5; Laws, 1992, ch. 349, § 4; Laws, 1993, ch. 446, § 3; Laws, 1998, ch. 334, § 1; Laws, 2004, ch. 476, § 21; Laws, 2010, ch. 507, § 1; Laws, 2013, ch. 333, § 3, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The "(1)" designation was deleted at the beginning of the section. The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a grammatical error in subsection (2) was corrected by substituting "any state statute that contradicts those federal standards is not applicable" for "any state statute that contradicts those federal standards are not applicable."

Cross References — State Department of Education, generally, see § 37-3-1 et seq.

RESEARCH REFERENCES

ALR. Validity of local or state denial of public school courses or activities to private or parochial school students. 43 A.L.R.4th 776.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 32 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 73 (answer; defense; defendant exempt from licensing statute).

CJS. 53 C.J.S., Licenses §§ 56, 57.

§ 75-60-7. Disposition of receipts.

All receipts of the Commission on Proprietary School and College Registration under this chapter shall be deposited in the State Treasury to the credit of the Commission on Proprietary School and College Registration, and shall be expended only pursuant to appropriation approved by the Legislature and as provided by law.

SOURCES: Codes, 1942, § 6688-04; Laws, 1972, ch. 507, § 4; Laws, 1986, ch. 432, § 6; Laws, 1992, ch. 349, § 5, eff from and after July 1, 1992.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 58-60.

§ 75-60-9. Certificate of registration required.

Effective sixty (60) days after the Commission on Proprietary School and College Registration has made public its standards for issuing certificates of registration, no course of instruction shall be established, offered or given, no diploma, degree or other written evidence of proficiency or achievement shall be offered or awarded, and no student enrollment in such course of instruction shall be solicited through advertising, agents, mail circulars, or other means, until the person planning to offer or offering such course of instruction, diplomas or degrees has obtained a certificate of registration from the commission. Notwithstanding the prohibition of this section, classes in progress at the time the commission makes public its standards may continue until completed.

SOURCES: Codes, 1942, § 6688-07; Laws, 1972, ch. 507, § 7; Laws, 1986, ch. 432, § 7; Laws, 1992, ch. 349, § 6, eff from and after July 1, 1992.

Cross References — Penalty for violation of this section, see § 75-60-39.

RESEARCH REFERENCES

ALR. Regulation and licensing of correspondence schools or their canvassers or solicitors. 92 A.L.R.2d 522.

§ 75-60-11. Issuance of certificate of registration; registration number.

(1) The Commission on Proprietary School and College Registration shall issue a certificate of registration to an applicant of good reputation, offering one or more courses of instruction upon determining that the applicant has the facilities, resources and faculty to provide students with the kind of instruction that it proposes to offer. A certificate of registration shall be granted or denied within sixty (60) days of the receipt of the application therefor by the commission. If the commission has not completed its determination with respect to the issuance of the certificate of registration within such sixty-day period, it shall issue a temporary certificate to the applicant, which certificate is sufficient to meet the requirements of Section 75-60-13 until such time as determination is made. Any certificate issued by the commission is valid only for the institution and courses for which it is issued and does not cover other schools or branches operated by the owner. A certificate of registration is valid for two (2) years unless earlier revoked for cause by the commission. The commission shall adopt rules and regulations for administration of the registration process. The commission may cause an investigation to be made into the correctness of the information submitted in any application for registration. If the commission believes that false, misleading or incomplete information has been submitted to it in connection with any application for registration, the commission shall conduct a hearing on the matter and may withhold a certificate of registration upon finding that the applicant has failed to meet the standards for such certificate or has submitted false, misleading or incomplete information to the commission. Application for a certificate of registration shall be made in writing to the commission on forms furnished by the commission. A certificate of registration is not transferable and shall be prominently displayed on the premises of an institution.

(2) The commission shall assign registration numbers to all schools registered with it. Schools shall display their registration numbers on all school publications and on all advertisements bearing the name of the school.

SOURCES: Codes, 1942, § 6688-05; Laws, 1972, ch. 507, § 5; Laws, 1986, ch. 432, § 8; Laws, 1992, ch. 349, § 7; Laws, 1993, ch. 446, § 4; Laws, 2011, ch. 371, § 3; Laws, 2013, ch. 333, § 4, eff from and after July 1, 2013.

RESEARCH REFERENCES

ALR. Regulation and licensing of correspondence schools or their canvassers or solicitors. 92 A.L.R.2d 522.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 50, 51.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq (grant or refusal of license).

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

§ 75-60-13. Issuance of certificate of registration under federal law in certain cases.

Notwithstanding the requirements of this chapter for issuance of certificates of registration, the Commission on Proprietary School and College Registration may, in accordance with regulations adopted by the commission, grant certificates of registration to schools, colleges, institutes or universities that have been approved by the State Board of Education pursuant to the "Act of March 3, 1966," 80 Stat. 20, 38 U.S.C.S. 1771.

SOURCES: Codes, 1942, § 6688-06; Laws, 1972, ch. 507, § 6; Laws, 1986, ch. 432, § 9; Laws, 1992, ch. 349, § 8, eff from and after July 1, 1992.

Cross References — Temporary certificate of registration as sufficient to meet requirements of this section, see § 75-60-11.

Federal Aspects — "Act of March 3, 1966," 80 Stat. 20, see 38 USCS § 1771.

RESEARCH REFERENCES

ALR. Regulation and licensing of correspondence schools or their canvassers or solicitors. 92 A.L.R.2d 522.

§ 75-60-15. Certificate of registration; fees; registration of new course offerings; school franchises.

(1) An initial application fee shall accompany each application for certificate of registration, and a renewal fee shall accompany each application for renewal of registration.

(2) If a renewal fee is not paid at least thirty (30) days prior to the expiration of a school's certificate of registration, in addition to the renewal fee, there shall be a delinquent fee collected. No portion of any license fee shall be subject to refund.

(3) A certificate of registration shall be issued or denied within sixty (60) days after receipt of the application by the commission.

(4) No new program of study shall be offered by any school holding a certificate of registration until it is registered with and approved by the commission in accordance with procedures which shall be established by the commission. After such course is registered in accordance with the approval procedures provided for herein, it shall be included as a part of any renewal of a certificate of registration. Each application for the original registration of a new program registration fee to be determined by the commission.

(5) A certificate of registration shall be valid only for the school and courses for which it is issued and shall not include other schools or additional locations of a school unless each such additional location (a) offers only courses which are identical to courses offered at the registered location and (b) is under the same ownership, management and control as that of the registered location except as may be provided otherwise in this section. Such additional locations meeting such requirements shall be identified as "annexes" on a certificate

application. Gross tuition revenues for the registered location and all annexes shall be combined for the purpose of determining fees payable under this section.

(6) The fees submitted with applications for initial or renewal of registration are not returnable to the applicant, even though a certificate of registration is not issued, unless the Commission on Proprietary School and College Registration determines that a financial hardship will result.

(7) The amount of fees authorized in this section and in Section 75-60-27 shall be determined by the Mississippi Community College Board after receiving recommendations from the commission.

SOURCES: Codes, 1942, § 6688-08; Laws, 1972, ch. 507, § 8; Laws, 1992, ch. 349, § 9; Laws, 1993, ch. 446, § 5; Laws, 1998, ch. 334, § 2; Laws, 1999, ch. 389, § 1; Laws, 2011, ch. 478, § 2; Laws, 2014, ch. 397, § 65, eff from and after July 1, 2014.

§ 75-60-17. Surety bond or deposit for certificate of registration.

The application for a certificate of registration shall be accompanied by a surety bond with conditions and in a form prescribed by the Commission on Proprietary School and College Registration with at least one (1) corporate bonding company approved by the Department of Insurance as surety thereon. The bond shall provide for the indemnification of any person suffering loss as the result of any false certification, school closure, any fraud or misrepresentation used in behalf of the principal in procuring such person's enrollment in a course of instruction, including repayment of tuition paid in advance by any student. The term of the bond shall be continuous, but it shall be subject to cancellation by the surety in the manner described in this section. The bond shall provide blanket coverage for the acts of all persons engaged as agents of the school without naming them and without regard to the time they are engaged during the term of the bond.

The surety may terminate the bond upon giving a sixty-day written notice to the principal and to the Commission on Proprietary School and College Registration, but the liability of the surety for acts of the principal and its agents shall continue during the sixty (60) days of cancellation notice. The notice does not absolve the surety from liability which accrues before the cancellation becomes final but which is discovered after that date and which may have arisen at any time during the term of the bond. Unless the bond is replaced by that of another surety before the expiration of the sixty (60) days' notice of cancellation, the certificate of registration shall be suspended. Any person subject to this chapter required to file a bond with an application for a certificate of registration may file, in lieu thereof, cash, a certificate of deposit, or government bonds of the same dollar value as the prescribed bond. Said deposit is subject to the same terms and conditions as are provided for in the surety bond required herein. Any interest or earnings on such deposits are payable to the depositor.

SOURCES: Codes, 1942, § 6688-09; Laws, 1972, ch. 507, § 9; Laws, 1986, ch. 432, § 10; Laws, 1992, ch. 349, § 10; Laws, 1998, ch. 334, § 3; Laws, 2011, ch. 478, § 3, eff from and after July 1, 2011.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 55.

CJS. 53 C.J.S., Licenses §§ 67-69.

§ 75-60-18. Tuition and fee refund policies.

When refunds are due, they shall be made within thirty (30) days of the last day of attendance if written notification of withdrawal has been provided to the institution by the student. All refunds shall be made without requiring a request from the student and within thirty (30) days from the date that the institution terminates the student or determines withdrawal by the student based on last day of attendance. In any event, all refunds shall be made within sixty (60) days of the student's last day of attendance. Any unused portion of fees and other institutional charges shall be refunded as follows:

(a) **Refunds for Classes Cancelled by the Institution** — If tuition and fees are collected in advance of the starting date of a program and the institution cancels the class, one hundred percent (100%) of the tuition and fees collected shall be refunded. The refund shall be made within thirty (30) days of the planned starting date.

(b) **Refunds for Students Who Withdraw on or Before the First Day of Class** — If tuition processing fees are collected in advance of the starting date of classes and the student does not begin classes or withdraws on the first day of classes, no more than One Hundred Dollars ($100.00) of the tuition and processing fees may be retained by the institution. Appropriate refunds for a student who does not begin classes shall be made within thirty (30) days of the class starting date.

(c) **Refunds for Students Enrolled Prior to Visiting the Institution** — Students who have not visited the school facility prior to enrollment will have the opportunity to withdraw without penalties within three (3) days following a documented attendance at a regularly scheduled orientation or a documented tour of the facilities and inspection of the equipment. Institutions are required to keep records of students' initial visits or orientation sessions.

(d) **Refunds for Students After Instruction has Begun** — Contractual obligations beyond twelve (12) months are prohibited. The refund policy for students attending proprietary institutions who incur financial obligations for a period of twelve (12) months or less shall be as follows:

(i) After the first day of classes and during the first ten percent (10%) of the period of financial obligation, the institution shall refund at least ninety percent (90%) of the tuition;

(ii) After the first ten percent (10%) of the period of financial obligation and until the end of the first twenty-five percent (25%) of the period of obligation, the institution shall refund at least fifty percent (50%) of the tuition;

(iii) After the first twenty-five percent (25%) of the period of financial obligation and until the end of the first fifty percent (50%) of the period of obligation, the institution shall refund at least twenty-five percent (25%) of the tuition; and

(iv) After the first fifty percent (50%) of the period of financial obligation, the institution may retain all of the tuition.

SOURCES: Laws, 1992, ch. 349, § 11; Laws, 1993, ch. 446, § 6; Laws, 1998, ch. 334, § 4, eff from and after July 1, 1998.

§ 75-60-19. Suspension, revocation or cancellation of certificate of registration; complaints; investigations; hearing procedures; subpoenas; decision after hearing; civil penalties and administrative sanctions; appeals.

(1) The Commission on Proprietary School and College Registration may suspend, revoke or cancel a certificate of registration for any one (1) or any combination of the following causes:

(a) Violation of any provision of the sections of this chapter or any regulation made by the commission;

(b) The furnishing of false, misleading or incomplete information requested by the commission;

(c) The signing of an application or the holding of a certificate of registration by a person who has pleaded guilty or has been found guilty of a felony or has pleaded guilty or been found guilty of any other indictable offense;

(d) The signing of an application or the holding of a certificate of registration by a person who is addicted to the use of any narcotic drug, or who is found to be mentally incompetent;

(e) Violation of any commitment made in an application for a certificate of registration;

(f) Presentation to prospective students of misleading, false or fraudulent information relating to the course of instruction, employment opportunity, or opportunities for enrollment in accredited institutions of higher education after entering or completing courses offered by the holder of a certificate of registration;

(g) Failure to provide or maintain premises or equipment for offering courses of instruction in a safe and sanitary condition;

(h) Refusal by an agent to display his agent permit upon demand of a prospective student or other interested person;

(i) Failure to maintain financial resources adequate for the satisfactory conduct of courses of study as presented in the plan of operation or to retain a sufficient number and qualified staff of instruction; however nothing in this chapter shall require an instructor to be certificated by the Commission

k) Accepting the services of an agent not licensed in accor
ons 75-60-23 through 75-60-37, inclusive;

l) Conviction or a plea of nolo contendere on the part of a
tor or director of a registered school of any felony under Miss
e law of another jurisdiction;

m) Continued employment of a teacher or instructor who
cted of or entered a plea of nolo contendere to any felo
ssippi law or the law of another jurisdiction;

n) Incompetence of any owner or operator to operate a scho

a) Any person who believes he has been aggrieved by a violat
n shall have the right to file a written complaint within tw
alleged violation. The commission shall maintain a writte
complaint that is made. The commission shall also se
ainant a form acknowledging the complaint and requesti
nation if necessary and shall advise the director of the sch
aint has been made and, where appropriate, the natu
aint.

) The commission shall within twenty (20) days of recei
n complaint commence an investigation of the alleged viol
within ninety (90) days of the receipt of such written compl
ten finding. The commission shall furnish such findings to t
led the complaint and to the chief operating officer of the sc
complaint. If the commission finds that there has been a v
ction, the commission shall take appropriate action.

) Schools shall disclose in writing to all prospective an
ts their right to file a complaint with the commission.

) The existence of an arbitration clause in no way neg
t's right to file a complaint with the commission.

) The commission may initiate an investigation without a c

Hearing procedures — (a) Upon a finding that there is g
e that a school, or an officer, agent, employee, partner or tea
ed a violation of subsection (1) of this section, the commiss
roceedings by serving a notice of hearing upon each and e
oject to the administrative action. The school or such party
sonable notice of hearing, including the time, place and nat

Regulate the course of the hearings, set the time and pla
ed hearings, and fix the time for filing of briefs and other
and

Direct the school or such party to appear and confer to co
plification of the issues by consent; and

Grant a request for an adjournment of the hearing only upo
hown.

strict legal rules of evidence shall not apply, but the decisio
rted by substantial evidence in the record.

commission, acting by and through its hearing officer, is h
and empowered to issue subpoenas for the attendance of wit
duction of books and papers at such hearing. Process issued
shall extend to all parts of the state and shall be served
gnated by the commission for such service. Where, in any pr
the hearing officer, any witness fails or refuses to attend
ssued by the commission, refuses to testify, or refuses to produ
papers the production of which is called for by a subpoe
of such witness, the giving of his testimony or the productio
papers shall be enforced by any court of competent jurisdic
in the manner provided for the enforcement of attendan
of witnesses in civil cases in the courts of this state.

cision after hearing — The hearing officer shall make
fact and conclusions of law, and shall also recommend in wr
ssion a final decision, including penalties. The hearing offic
of his findings of fact, conclusions of law and recommended
y and his attorney, or representative. The commission shal
lecision, which shall be based exclusively on evidence an
introduced at the hearing. If it is determined that a pa
a violation, the commission shall issue a final order an
alties in accordance with this section. The commission shall
ail, return receipt requested, a copy of the final order to th
orney, or representative. The commission shall, at the reques
uch party, furnish a copy of the transcript or any part there
f the cost thereof.

vil penalties and administrative sanctions — (a) A previous five (5) years, the liability shall be a civil penalty not to exceed Five Thousand Dollars ($5,000.00) for each such violation.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, a hearing officer may recommend and the commission may impose a civil penalty not to exceed Twenty-five Thousand Dollars ($25,000.00) for any of the following violations: (i) operation of a school without a registration in violation of this chapter; (ii) operation of a school knowing that the school's registration has been suspended or revoked; (iii) use of false, misleading, deceptive or fraudulent advertising; (iv) employment of recruiters on the basis of a commission, bonus or quota, except as authorized by the commission; (v) directing or authorizing recruiters to offer guarantees of jobs upon completion of a course; (vi) failure to make a tuition refund when such failure is part of a pattern of misconduct; or (vii) violation of any other provision of this chapter, or any rule or regulation promulgated pursuant thereto, when such violation constitutes part of a pattern of misconduct which significantly impairs the educational quality of the program or programs being offered by the school. For each enumerated offense, a second or further violation committed within the previous five (5) years shall be subject to a civil penalty not to exceed Fifty Thousand Dollars ($50,000.00) for each such violation.

(c) In addition to the penalties authorized in paragraphs (a) and (b) of this subsection, a hearing officer may recommend and the commission may impose any of the following administrative sanctions: (i) a cease and desist order; (ii) a mandatory direction; (iii) a suspension or revocation of a certificate of registration; (iv) a probation order; or (v) an order of restitution.

(d) The commission may suspend a registration upon the failure of a school to pay any fee, fine or penalty as required by this chapter unless such failure is determined by the commission to be for good cause.

(e) All civil penalties, fines and settlements received shall accrue to the credit of the Commission on Proprietary School and College Registration.

(7) Any penalty or administrative sanction imposed by the commission under this section may be appealed by the school, college or other person affected to the Mississippi Community College Board as provided in Section 75-60-4(3), which appeal shall be on the record previously made before the commission's hearing officer. All appeals from the Mississippi Community College Board shall be on the record and shall be filed in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

SOURCES: Codes, 1942, § 6688-10; Laws, 1972, ch. 507, § 10; Laws, 1986, ch. 432, § 11; Laws, 1992, ch. 349, § 12; Laws, 2011, ch. 478, § 4; Laws, 2013, ch. 333, § 5, eff from and after July 1, 2013.

Cross References — Commission on Proprietary School and College Registration to confer, pursuant to this section, with agent believed to be in violation of statutory requirements, see § 75-60-33.

RESEARCH REFERENCES

ALR. Regulation and licensing of correspondence schools or their canvassers or solicitors. 92 A.L.R.2d 522.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 56, 58, 60, 61, 63 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41 et seq (revocation or suspension of license).

CJS. 53 C.J.S., Licenses § 83 et seq.

§ 75-60-21. Injunctive relief against unregistered activity.

The commission shall petition the chancery court of the county in which a person or agent offers one or more courses of instruction subject to the provisions of this chapter or advertises for the offering of such courses without a certificate of registration for an order enjoining such offering or advertising. The court may grant such injunctive relief upon a showing that the respondent named in the petition is offering or advertising one or more courses of instruction without a certificate of registration. The Attorney General or the district attorney of the district including the county in which such action is brought, shall, upon request of the commission, represent the commission in prosecuting any such action.

SOURCES: Codes, 1942, § 6688-07; Laws, 1972, ch. 507, § 7; Laws, 1986, ch. 432, § 12; Laws, 1992, ch. 349, § 13, eff from and after July 1, 1992.

RESEARCH REFERENCES

ALR. Regulation and licensing of correspondence schools or their canvassers or solicitors. 92 A.L.R.2d 522.

§ 75-60-23. Agent permit required.

No person employed by an institution licensed by the commission, regardless of job title, job description, full-time or part-time employment status, shall directly or indirectly influence the decision of any prospective student to enroll for a fee in a course of instruction without first securing a permit as an agent from the Commission on Proprietary School and College Registration. If the person represents more than one (1) institution, a separate permit shall be obtained for each institution represented. Agent permits shall only be issued to agents of institutions that hold a certificate of registration issued by the commission.

SOURCES: Codes, 1942, § 6688-11; Laws, 1972, ch. 507, § 11; Laws, 1986, ch. 432, § 13; Laws, 1992, ch. 349, § 14; Laws, 1993, ch. 446, § 7; Laws, 2011, ch. 478, § 5; Laws, 2013, ch. 333, § 6, eff from and after July 1, 2013.

Cross References — Suspension, revocation, or cancellation of proprietary school's certificate of registration for accepting services of agent not licensed in accordance with this section, see § 75-60-19.

Temporary permit to act as agent to sell, or solicit students for, course of instruction, as sufficient to meet requirements of this section, see § 75-60-25.

Bar to recovery on contract in connection with course of instruction where agent of person selling or administering course lacked permit required by this section, see § 75-60-35.

Penalty for violation of this section, see § 75-60-39.

RESEARCH REFERENCES

ALR. Regulation and licensing of correspondence schools or their canvassers or solicitors. 92 A.L.R.2d 522.

§ 75-60-25. Issuance of agent permit.

The application for an agent permit shall be made on forms to be furnished by the Commission on Proprietary School and College Registration. Any agent permit applied for shall be granted or denied within sixty (60) days of the receipt of the application therefor by the commission. If the commission has not completed its determination with respect to the issuance of an agent permit within such sixty-day period, it shall issue a temporary agent permit to the applicant, which permit is sufficient to meet the requirements of Section 75-60-23 until such time as such determination is made. Upon approval for an agent permit, the commission shall issue a pocket card to the person, giving his name, agent permit number and the name and campus location of his employing school, and certifying that the person whose name appears on the card is an authorized agent of the school. An agent permit is valid for one (1) year from the date on which it was issued.

SOURCES: Codes, 1942, §§ 6688-11, 6688-12; Laws, 1972, ch. 507, §§ 11, 12; Laws, 1986, ch. 432, § 14; Laws, 1992, ch. 349, § 15; Laws, 1993, ch. 446, § 8; Laws, 2011, ch. 478, § 6; Laws, 2013, ch. 333, § 7, eff from and after July 1, 2013.

Cross References — Suspension, revocation, or cancellation of proprietary school's certificate of registration for accepting services of agent not licensed in accordance with this section, see § 75-60-19.

No permit issuable pursuant to this section to person found not to be of good moral character, see § 75-60-31.

Issuance of permit under this section not constituting approval of course of instruction or party offering it, see § 75-60-37.

RESEARCH REFERENCES

ALR. Regulation and licensing of correspondence schools or their canvassers or solicitors. 92 A.L.R.2d 522.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 50, 51.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq (grant or refusal of license).

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

§ 75-60-27. Agent permit fees.

The application for an agent permit and an application for renewal thereof shall be accompanied by fees determined by the Mississippi Community

College Board. All fees collected for the issuance or renewal of agent permits shall be deposited in the State Treasury to the credit of the Commission on Proprietary School and College Registration.

SOURCES: Codes, 1942, § 6688-11; Laws, 1972, ch. 507, § 11; Laws, 1992, ch. 349, § 16; Laws, 2011, ch. 478, § 7; Laws, 2014, ch. 397, § 66, eff from and after July 1, 2014.

Cross References — Suspension, revocation, or cancellation of proprietary school's certificate of registration for accepting services of agent not licensed in accordance with this section, see § 75-60-19.

§ 75-60-29. Surety bond for agent permit.

The application for an agent permit shall be accompanied by a surety bond acceptable to the Commission on Proprietary School and College Registration. Such bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring his enrollment, and may be supplied by an agent of a school or by the school itself as a blanket bond covering each of its agents. The surety of any such bond may cancel the same upon giving thirty (30) days' notice in writing to the commission and is relieved of liability for any breach of condition occurring after the effective date of said cancellation. An application for renewal shall be accompanied by a surety bond, as provided in this section, if a continuous bond has not been furnished.

SOURCES: Codes, 1942, § 6688-11; Laws, 1972, ch. 507, § 11; Laws, 1986, ch. 432, § 15; Laws, 1992, ch. 349, § 17; Laws, 2011, ch. 478, § 8, eff from and after July 1, 2011.

Cross References — Suspension, revocation, or cancellation of proprietary school's certificate of registration for accepting services of agent not licensed in accordance with this section, see § 75-60-19.

Existence of bond pursuant to this section as not limiting or impairing right of recovery otherwise available, and not relevant to amount of damages recoverable, see § 75-60-35.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 50.

CJS. 53 C.J.S., Licenses § 57.

§ 75-60-31. Good moral character prerequisite to issuance of agent permit.

No agent permit shall be issued pursuant to Section 75-60-25 to any person found by the Commission on Proprietary School and College Registration not to be of good moral character.

SOURCES: Codes, 1942, § 6688-16; Laws, 1972, ch. 507, § 16; Laws, 1986, ch. 432, § 16; Laws, 1992, ch. 349, § 18; Laws, 2011, ch. 478, § 9, eff from and after July 1, 2011.

Cross References — Suspension, revocation, or cancellation of proprietary school's certificate of registration for accepting services of agent not licensed in accordance with this section, see § 75-60-19.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 52, 53.

CJS. 53 C.J.S., Licenses § 63.

§ 75-60-33. Revocation of agent permit.

Any agent permit issued may be revoked by the Commission on Proprietary School and College Registration if the holder of the permit solicits or enrolls students through fraud, deception or misrepresentation, or upon a finding that the permit holder is not of good moral character.

The Commission on Proprietary School and College Registration shall hold informal conferences pursuant to Section 75-60-19 with an agent believed to be in violation of one or more of the above conditions. If these conferences fail to eliminate the agent's objectionable practices or procedures, the commission shall hold a public hearing. A record of such proceedings shall be taken and appeals to the commission shall be upon such record, except as may be provided by rules and regulations to be adopted by the commission. Nothing said or done in the informal conferences shall be disclosed by the staff of the commission nor be used as evidence in any subsequent proceedings.

SOURCES: Codes, 1942, § 6688-13; Laws, 1972, ch. 507, § 13; Laws, 1986, ch. 432, § 17; Laws, 1992, ch. 349, § 19; Laws, 2011, ch. 478, § 10, eff from and after July 1, 2011.

Cross References — Suspension, revocation, or cancellation of proprietary school's certificate of registration for accepting services of agent not licensed in accordance with this section, see § 75-60-19.

RESEARCH REFERENCES

ALR. Regulation and licensing of correspondence schools or their canvassers or solicitors. 92 A.L.R.2d 522.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 56, 58, 60, 61, 63 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41 et seq (revocation or suspension of license).

CJS. 53 C.J.S., Licenses § 82 et seq.

§ 75-60-35. Existence of surety bond not to impair other right of recovery; recovery on contract barred if agent not holder of agent permit.

The fact that a bond is in force pursuant to Section 75-60-29 does not limit nor impair any right of recovery otherwise available pursuant to law, nor is the amount of such bond relevant in determining the amount of damages or other relief to which any plaintiff may be entitled.

No recovery shall be had on any contract for or in connection with a course of instruction by any person selling or administering such course if the agent of such person was not the holder of an agent permit as required by Section 75-60-23 at the time he negotiated the contract for or sold such course.

SOURCES: Codes, 1942, § 6688-14; Laws, 1972, ch. 507, § 14; brought forward, Laws, 1992, ch. 349, § 20; Laws, 2011, ch. 478, § 11, eff from and after July 1, 2011.

Cross References — Suspension, revocation, or cancellation of proprietary school's certificate of registration for accepting services of agent not licensed in accordance with this section, see § 75-60-19.

§ 75-60-37. Agent permit not to constitute approval of any program of instruction.

The issuance of an agent permit pursuant to Section 75-60-25 does not constitute approval of any program of instruction or the person or institution offering, conducting or otherwise administering the same, unless licensed by the Commission on Proprietary School and College Registration. Any representation contrary to this section or tending to imply that an agent permit issued pursuant to Section 75-60-25 constitutes such approval is misrepresentation within the meaning of the provisions of this chapter.

SOURCES: Codes, 1942, § 6688-15; Laws, 1972, ch. 507, § 15; Laws, 1986, ch. 432, § 18; Laws, 1992, ch. 349, § 21; Laws, 2011, ch. 478, § 12, eff from and after July 1, 2011.

Cross References — Suspension, revocation, or cancellation of proprietary school's certificate of registration for accepting services of agent not licensed in accordance with this section, see § 75-60-19.

§ 75-60-39. Penalties.

Whoever violates Section 75-60-9 or Section 75-60-23 shall be fined not more than Five Hundred Dollars ($500.00) or imprisoned not more than ninety (90) days, or both.

SOURCES: Codes, 1942, § 6688-17; Laws, 1972, ch. 507, § 17; brought forward, Laws, 1992, ch. 349, § 22, eff from and after July 1, 1992.

§ 75-60-41. When certificate and permit provisions shall take effect.

Sections 75-60-9 through 75-60-39, inclusive, of this chapter shall take effect and be in force sixty (60) days following the promulgation and publication of rules, regulations and procedures governing the registration and certification of schools, courses of instruction or institutes and agents thereof as provided hereinabove.

SOURCES: Codes, 1942, § 6688-18; Laws, 1972, ch. 507, § 18; brought forward, Laws, 1992, ch. 349, § 23, eff from and after July 1, 1992.

§ 75-60-43. Records, regulations, and forms to be provided by State Department of Education; validity of certificates and permits issued by Department.

The State Department of Education shall supply to the Mississippi Community College Board all records, regulations and forms relating to proprietary school and college registration. All certificates and permits for proprietary schools and colleges issued by the State Department of Education shall be valid until their normal expiration dates unless suspended or revoked for cause.

SOURCES: Laws, 1992, ch. 349, § 24; Laws, 2014, ch. 397, § 67, eff from and after July 1, 2014.

§ 75-60-45. Review and evaluation of qualifications of instructors; minimum qualifications for instructors.

The commission shall not appoint instructors, but the commission may review and evaluate whether an instructor is qualified to teach a program of study as follows:

(1) Academic classes. Classroom instructors teaching general education courses shall hold at least a bachelor's degree with appropriate coursework in the teaching discipline from an accredited institution and one (1) of the following:

(a) A minimum of eighteen (18) semester hours of credit from an accredited institution in the subject area being taught; or

(b) A minimum of twelve (12) semester hours in methods and techniques of teaching.

(2) Technical classes. Classroom instructors teaching technical courses shall have at least a high-school diploma or an equivalent diploma and at least one (1) of the following:

(a) A degree, certificate or license in the subject area or a related field;

(b) A minimum of eighteen (18) semester hours of credit in mathematics, science or courses related to the subject area from an accredited institution; or

(c) A minimum of three (3) years' work experience in the technical area or a related field.

(3) Apprenticeship trade classes. Instructors of apprenticeship trades shall have the following qualifications and training:

(a) At least a high-school diploma or an equivalent diploma;

(b) A minimum of three (3) years' work experience above the students' level in the trade to be taught; and

(c) Recognized standing as a tradesman or specialist supported by evidence from previous employers.

SOURCES: Laws, 2013, ch. 333, § 8, eff from and after July 1, 2013.

CHAPTER 61

Manufacture and Sale of Jewelry and Optical Equipment

Article 1. Auctioneers of Jewelry 75-61-1
Article 3. Manufacture and Sale of Eyeglasses and Sunglasses 75-61-101

ARTICLE 1.

AUCTIONEERS OF JEWELRY.

SEC.
75-61-1. Jewelry auction sales regulated.
75-61-3. Inventory to be furnished chancery clerk.
75-61-5. Bond to be furnished chancery clerk.
75-61-7. Hours of sale limited.
75-61-9. Penalty.
75-61-11. Warranties; statements or representations made.
75-61-13. Article not to apply to certain sales.

§ 75-61-1. Jewelry auction sales regulated.

It shall be unlawful for any person, firm or corporation to sell or dispose of, or offer for sale, in the State of Mississippi, at public auction, or to cause or permit to be sold, disposed of or offered for sale in the State of Mississippi, at public auction, any gold, silver or plated ware, precious stones, cut glass, china, watches, clocks or jewelry, whether the same be their own property, or whether in so doing they act as an agent or employee of others; provided, however, that this section shall not apply to sales at public auction of stock on hand for more than ninety (90) days preceding the beginning of said sale, if the person, firm or corporation owning the same shall have been, for a period of one (1) year next preceding said sale, continuously in business in the county wherein such sale is held or to be held, as a retail or wholesale merchant of such goods, wares and merchandise as are being sold or offered for sale at said auction; provided, further, that the stock on hand of said merchant or merchants, whose stocks are to be sold at public auction, shall not be increased, or replenished, in anticipation of such sale, nor within ninety (90) days preceding the beginning of said sale, nor pending said sale; and provided, further, that said auction sale shall be held on successive days, Sunday and legal holidays excepted, but shall not continue for more than thirty (30) days, at any one time; and, provided further, that the same person, firm or corporation shall not hold more than one such auction sale within a period of one (1) year.

SOURCES: Codes, 1930, § 3715; 1942, § 5146; Laws, 1926, ch. 174; Laws, 1928, ch. 135; Laws, 1954, ch. 251, § 1.

Cross References — Municipal regulation of bankruptcy sales, fire sales, etc., see § 21-19-37.

Sale by auction under the Uniform Commercial Code, see § 75-2-328.

RESEARCH REFERENCES

ALR. Withdrawal of property from auction sale. 37 A.L.R.2d 1049.

Jewelry auctions. 53 A.L.R.2d 1433.

Liability of auctioneer or clerk to buyer in respect of title, condition, or quality of property sold. 80 A.L.R.2d 1237.

Am Jur. 7 Am. Jur. 2d, Auctions and Auctioneers §§ 1 et seq.

2B Am. Jur. Pl & Pr Forms (Rev), Auctions and Auctioneers, Form 1 (petition or application; for license; jewelry and appliance auction; to government licensing agency).

3 Am. Jur. Legal Forms 2d (Rev), Auctions and Auctioneers, § 31:25 (contract to employ auctioneer).

3 Am. Jur. Legal Forms 2d (Rev), Auctions and Auctioneers, §§ 31:45, 31:46, 31:71 (advertisement, notice, or announcement of auction sale).

CJS. 7A C.J.S., Auctions and Auctioneers § 3.

§ 75-61-3. Inventory to be furnished chancery clerk.

No person, firm or corporation shall sell, or offer for sale, in any county of this state at auction, a stock of merchandise consisting of gold, silver, or plated ware, precious stones, watches, clocks, cut glass, china, or jewelry, without first having filed with the clerk of the chancery court of the county in which said sale is to be conducted a full and complete inventory of each article or class of articles to be offered at said auction sale, with an affidavit in support thereof, including (1) the description and acquisition cost of each article or class of articles, together with the name of the manufacturer thereof, where ascertainable; (2) the number of articles in each such class; (3) the serial number of each such article, where numbered; and (4) the aggregate acquisition cost of all the stock of such merchandise to be offered at said public auction. There shall be appended to said inventory an affidavit which shall state (1) that the said inventory is true and correct, together with the aggregate acquisition cost thereof; (2) that said articles of merchandise were acquired in the usual course of trade, and not for the purpose of offering the same for sale at said auction; (3) that none of the listed articles of merchandise was acquired within the ninety (90) day period immediately preceding the beginning of said auction sale; and (4) that no additional merchandise as described above will be acquired or offered for sale during the said auction. True copies of said inventory shall be kept posted in a public place on the premises where the said auction sale is being conducted, which shall be corrected at the close of each day's business so as to accurately show the number of articles remaining to be sold in each such class, together with their aggregate acquisition cost. In case the merchandise to be sold belongs to an individual, the inventory and affidavit shall be made by the owner. In case the merchandise belongs to a firm, the inventory and affidavit shall be made by a member thereof, and in the case of the corporation, the inventory and affidavit shall be made by an officer, or the general manager, or by someone having personal knowledge of the facts. No additions shall thereafter be made to said stock to be offered at said auction sale. The said inventory and affidavit shall be a part of the records of said chancery clerk, and he shall be paid a fee of two and one-half dollars ($2.50) by the person filing said inventory.

SOURCES: Codes, 1930, § 3716; 1942, § 5147; Laws, 1926, ch. 174; Laws, 1954, ch. 251, § 2.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. 2d, Auctions and Auctioneers § 7.

§ 75-61-5. Bond to be furnished chancery clerk.

At the time of the filing of the inventory provided for in Section 75-61-3, and before any such auction sale is commenced, the person, firm or corporation conducting said sale shall file with the said inventory, with the chancery clerk of the county where said sale is to be conducted, a bond in the penal sum of two thousand five hundred dollars ($2,500.00), to be approved by said chancery clerk, conditioned for the faithful compliance with the provisions of this article, and for the protection of any purchasers at said sale who may suffer loss because of misrepresentation or breach of warranty. Said bond shall be filed by said chancery clerk with said inventory, and shall be and remain a part of the public records of his office.

SOURCES: Codes, 1930, § 3718; 1942, § 5149; Laws, 1926, ch. 174; Laws, 1954, ch. 251, § 3.

§ 75-61-7. Hours of sale limited.

It shall be unlawful for any person, firm or corporation to sell or offer to sell, at auction, any such gold, silver, plated ware, clocks, watches, cut glass, china ware, or jewelry from the 1st day of April to the 30th day of September, both inclusive, between the hours of seven o'clock in the evening and seven o'clock the following morning, and from the 1st day of October to the 31st day of March, both inclusive, between the hours of five o'clock in the evening and eight o'clock the following morning.

SOURCES: Codes, 1930, § 3717; 1942, § 5148; Laws, 1926, ch. 174.

JUDICIAL DECISIONS

1. In general.

Ordinance and statute prohibiting auction sales by jewelers between certain hours did not violate due process clause and equality clause. Matheny v. Simmons, 165 Miss. 429, 139 So. 172 (1932).

§ 75-61-9. Penalty.

Each separate sale of any article of merchandise above described at public auction without first having complied with all the provisions of this article shall constitute a separate violation or offense, and whoever violates any of the provisions of said article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00) for each such offense.

SOURCES: Codes, 1930, § 3719; 1942, § 5150; Laws, 1926, ch. 174.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

CJS. 7A C.J.S., Auctions and Auctioneers §§ 39-43, 46, 47.

§ 75-61-11. Warranties; statements or representations made.

Every person, firm or corporation conducting such auctions shall be truthful in marking or describing the quantity, quality, size, grade, or kind, or value, of merchandise being offered at auction, and for the purpose hereof all such statements or representations shall be warranties.

SOURCES: Codes, 1930, § 3720; 1942, § 5151; Laws, 1926, ch. 174.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. 2d, Auctions and Auctioneers §§ 15, 50, 64.

3 Am. Jur. Legal Forms 2d, Auctions and Auctioneers §§ 31:16-31:18 (limitations on warranties).

CJS. 7A C.J.S., Auctions and Auctioneers §§ 16-47.

§ 75-61-13. Article not to apply to certain sales.

This article shall not apply to judicial sales, nor to sales by executors or administrators, nor to sales by legally and duly appointed trustees of unredeemed pledges, nor to articles that constitute any part of regular household furnishings.

SOURCES: Codes, 1930, § 3721; 1942, § 5152; Laws, 1926, ch. 174; Laws, 1954, ch. 251, § 4.

ARTICLE 3.

MANUFACTURE AND SALE OF EYEGLASSES AND SUNGLASSES.

SEC.	
75-61-101.	Definitions.
75-61-103.	Regulation of fabrication or sale.
75-61-105.	Penalties.

§ 75-61-101. Definitions.

As used in this article, the term "person" shall also include any company, firm, association or corporation as well as an individual.

SOURCES: Codes, 1942, § 5131-121; Laws, 1971, ch. 522, § 1, eff from and after January 1, 1972.

§ 75-61-103. Regulation of fabrication or sale.

No person shall fabricate, sell, offer to sell, or have in his possession with intent to sell or offer to sell eyeglasses or sunglasses unless they are fitted with plastic lenses, with laminated lenses, or with glass lenses which are tempered or case hardened. Glass lenses shall have a minimum center thickness of two (2) millimeters, in all cases except those cases where such lenses will not fulfill the visual requirements of the particular patient.

SOURCES: Codes, 1942, § 5131-121; Laws, 1971, ch. 522, § 1, eff from and after January 1, 1972.

Cross References — Practice of optometry, see § 73-19-1 et seq.
Sale of spectacles by physicians, druggists and merchants, see § 73-19-29.

§ 75-61-105. Penalties.

A violation of this article shall constitute a misdemeanor, and a conviction therefor shall result in a fine of not more than one hundred dollars ($100.00) and not less than twenty-five dollars ($25.00) for each separate offense.

SOURCES: Codes, 1942, § 5131-121; Laws, 1971, ch. 522, § 1, eff from and after January 1, 1972.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 63

Sales of Cemetery Merchandise and Funeral Services

Article 1. In General 75-63-1
Article 3. Preneed Cemetery and Funeral Registration 75-63-51

ARTICLE 1.

IN GENERAL.

SEC.
75-63-1 and 75-63-3. Repealed.
75-63-5. Cemeteries not required to accept property or perform services contrary to law.
75-63-7 through 75-63-23. Repealed.
75-63-25. Certain preneed cemetery and funeral contracts overrule conflicting wishes of next of kin; preneed contract providers have right to rely on contract and perform obligations in accordance with contract.

§§ 75-63-1 and 75-63-3. Repealed.

Repealed by Laws, 2001, ch. 513, § 14, eff from and after January 1, 2002.

§ 75-63-1 and § 75-63-3 [Codes, 1942, §§ 5131-31 and 5131-32; Laws, 1966, ch. 374, §§ 1, 2; Laws, 1975, ch. 503, § 1, eff from and after passage (approved April 8, 1975).]

Editor's Note — Former § 75-63-1 provided limitations on the sale of services related to a funeral service or burial of the dead that are deliverable at a future and unspecified date.

Former § 75-63-3 required seller of property and/or services related to a funeral service or burial of the dead to deposit certain amount of money in trust fund and provide trustee certain information.

§ 75-63-5. Cemeteries not required to accept property or perform services contrary to law.

Nothing contained in this chapter shall be construed to require any cemetery to accept any personal property, or perform any personal services contrary to law or ordinances pertaining to the burial of deceased human beings, or contrary to rules and regulations of a cemetery pertaining to the quality and kind of personal property that may be used in connection with the burial of deceased human beings in any such cemetery.

SOURCES: Codes, 1942, § 5131-33; Laws, 1966, ch. 374, § 3, eff from and after passage (approved June 15, 1966).

Cross References — Cemeteries, generally, see § 41-43-31 et seq.

RESEARCH REFERENCES

ALR. Liability of cemetery in connection with conducting or supervising burial services. 42 A.L.R.4th 1059.

§§ 75-63-7 through 75-63-23. Repealed.

Repealed by Laws, 2001, ch. 513, § 14, eff from and after January 1, 2002.

§ 75-63-7. [Codes, 1942, § 5131-34; Laws, 1966, ch. 374, § 4; Laws, 1975, ch. 503, § 3, eff from and after passage (approved April 8, 1975).]

§ 75-63-9. [Codes, 1942, § 5131-35; Laws, 1966, ch. 374, § 5; Laws, 1966, ch. 374, § 5; Laws, 1975, ch. 503, § 4, eff from and after passage (approved April 8, 1975).]

§ 75-63-11. [Codes, 1942, § 5131-36; Laws, 1966, ch. 374, § 6; Laws, 1975, ch. 503, § 5, eff from and after passage (approved April 8, 1975).]

§ 75-63-13. [Codes, 1942, § 5131-37; Laws, 1966, ch. 374, § 7; Laws, 2001, ch. 513, § 14, eff from and after Jan. 1, 2002.]

§ 75-63-15. [Codes, 1942, § 5131-38; Laws, 1966, ch. 374, § 8; Laws, 1982, ch. 371, eff from and after July 1, 1982).]

§ 75-63-17. [Codes, 1942, § 5131-39; Laws, 1966, ch. 374, § 9; Laws, 1975, ch. 503, § 6, eff from and after passage (approved April 8, 1975).]

§ 75-63-18. [Laws, 1982, ch. 371, § 5, eff from and after July 1, 1982.]

§ 75-63-19. [Codes, 1942, § 5131-40; Laws, 1966, ch. 374, § 10; Laws, 1975, ch. 503, § 7; Laws 1982, ch. 371, § 6, eff from and after July 1, 1982.]

§ 75-63-21. [Codes, 1942, § 5131-41; Laws, 1966, ch. 374, § 11, eff from and after passage (approved June 15, 1966).]

§ 75-63-23. [Codes, 1942, § 5131-43; Laws, 1966, ch. 374, § 13; Laws, 1981, ch. 432, § 2, eff from and after passage (approved March 25, 1981).]

Editor's Note — Former § 75-63-7 provided for the reinvestment and disposition of the trust funds and the protection of the original principal.

Former § 75-63-9 provided for the disposition of the trust funds after delivery of the property or services.

Former § 75-63-11 provided for the failure of the seller of cemetery merchandise and funeral services to perform the contract.

Former § 75-63-13 detailed the liability of the trustee of the fund created under the chapter.

Former § 75-63-15 provided for annual account by the trustee of a cemetary merchandise trust fund to the seller and record keeping requirements.

Former § 75-63-17 provided for the administration of the trust fund and chancery court jurisdiction.

Former § 75-63-18 provided for accounts, reports, and notices to be filed with the chancery clerk and audit.

Former § 75-63-19 described excluded sales and transactions.

Former § 75-63-21 provided that the waiver in a contract of statute provisions shall be void.

Former § 75-63-23 provided for penalties against any person, parternship, corporation or organization for violations of provisions of the chapter.

Cross References — Investment of trust funds, see § 91-13-1 et seq.

§ 75-63-25. Certain preneed cemetery and funeral contracts overrule conflicting wishes of next of kin; preneed contract providers have right to rely on contract and perform obligations in accordance with contract.

(1) Any preneed contract which is executed by the decedent for his own arrangements and is fully funded overrules, following the decedent's death, the conflicting wishes of the decedent's next of kin, unless a compelling public interest makes it impossible to comply with a decedent's directions in a preneed contract.

(2) The provisions of this section shall not prevent the decedent's next of kin or surviving heirs at law from, at their own expense, pursuing reasonable services and making reasonable arrangements that do not conflict with the decedent's directions in a preneed contract.

(3) All contract providers shall have the right to rely on the preneed contract and perform obligations in accordance with the preneed contract. There shall be no liability for any contract provider who in good faith performs his obligations pursuant to the preneed contract, provided the preneed contract is in compliance with Section 75-63-51 et seq. and any rules promulgated thereunder.

SOURCES: Laws, 2004, ch. 524, § 1, eff from and after July 1, 2004.

Cross References — Preneed cemetery and funeral registration, see §§ 75-63-51 through 75-63-75.

ARTICLE 3.

PRENEED CEMETERY AND FUNERAL REGISTRATION.

SEC.
75-63-51. Short title.
75-63-53. Definitions.
75-63-55. Preneed contracts to be evidenced in writing on forms approved by and on file with Secretary of State; contracts in violation of article and chapter; contents of written preneed contract; contract to be funded by trust or insurance.
75-63-56. Denial, suspension, revocation, cancelation or nonrenewal of registration; grounds; cease and desist order; freezing of disbursements from trust under exceptional circumstances.
75-63-57. Record-keeping requirements.
75-63-59. Requirements for contract funded by trust.
75-63-61. Requirements for contract funded by insurance.
75-63-63. Preneed contracts to be portable; who may name a substitute provider.
75-63-65. Sellers of preneed contracts required to register with Secretary of State; registration fees; regulations and registration requirements; registration forms.
75-63-67. Annual written or electronic reports of preneed contract sales and of all trust fund account activity to be submitted to Secretary of State; penalty for late reports.
75-63-68. Conversion of trust funded prepaid funeral benefits to insurance funded

prepaid funeral benefits or annuity contract upon appeal to Secretary of State; written disclosure of terms to affected preneed purchasers.
75-63-69. Sanctions for violations; procedural requirements; appeal.
75-63-70. Joint and several liability of preneed operator's managers, officers, directors, etc.
75-63-71. Disclosure of information contained in registrations, statements, applications, and reports; confidentiality of information obtained through investigation or examination.
75-63-73. Examination of business or person offering preneed funeral services and merchandise; records open to inspection; subpoena power of Secretary of State.
75-63-75. Article does not constitute authorization for unlicensed persons to sell life insurance.
75-63-77. Change of ownership or control; verified change of ownership application; contents; approval by Secretary of State; liability of seller and buyer.
75-63-79. Procedure upon cessation of business or revocation or suspension of registration to sell preneed funeral contracts.
75-63-81. Preneed Contracts Loss Recovery Fund; creation, purpose, administration, loss recovery fee, reimbursement for claims; prohibition against use of existence of fund for sales, solicitation, or inducement to purchase contract; Preneed Contracts Loss Recovery Association; directors, appointment, compensation; appeals.

§ 75-63-51. Short title.

This article shall be known and may be cited as the "Preneed Cemetery and Funeral Registration Act."

SOURCES: Laws, 2001, ch. 513, § 1, eff from and after Jan. 1, 2002.

Editor's Note — Laws of 2008, ch. 550, § 4 provides:

"SECTION 4. (1) There is created a task force to study Mississippi laws regulating preneed contracts for funeral services and any possible reforms needed to improve application of those laws. The task force shall include in its study existing and proposed legislation that regulates the operation of cemeteries and crematoriums and mortuaries.

"(2) The task force shall be composed of the following members:

"(a) The Chairman, or his designee, of the House of Representatives Judiciary "B" Committee;

"(b) The Chairman, or his designee, of the Senate Insurance Committee;

"(c) One (1) person appointed by the Speaker of the Mississippi House of Representatives;

"(d) One (1) person appointed by the Lieutenant Governor; and

"(e) The Secretary of State, or his designee.

"(3) The Chairman of the House of Representatives Judiciary "B" Committee and the Chairman of the Senate Insurance Committee shall serve as co-chairmen of the task force. The task force shall meet at the call of the co-chairmen and shall select a vice chairman from among its membership. The vice chairman shall also serve as secretary of the task force and shall be responsible for keeping all records of the task force. A majority of the members of the task force shall constitute a quorum.

"(4) The task force shall file a report with the Clerk of the House of Representatives and the Secretary of the Senate containing its findings and recommendations by not later than December 1, 2008.

"(5) Legislative members of the committee shall receive per diem, travel or other expenses, if authorized by the Management Committee of the House of Representatives and the Rules Committee of the Senate, from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; provided that no per diem or expense for attending meetings of the committee shall be paid while the Legislature is in session.

"(6) Nonlegislative members of the task force shall receive no compensation for their service on the task force but may be reimbursed for expenses related to their service on the task force as authorized by law.

"(7) The task force shall be dissolved on December 1, 2008."

Cross References — Cemeteries and burial grounds, generally, see §§ 41-43-1 et seq.

Regulation of cemeteries, generally, see §§ 41-43-31 et seq.

Applicability of §§ 75-63-1 through 75-63-75 to the sale of preneed contracts for caskets, see § 73-11-67.

§ 75-63-53. Definitions.

As used in this article, unless the context requires otherwise:

(a) "Buyer" means the person who purchases the preneed contract.

(b) "Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement" or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(c) "Cemetery" means an organization as defined in Section 41-43-33.

(d) "Contract insured" or "contract owner" means the person upon whose death will initiate the performance of a preneed contract.

(e) "Contract provider" means the funeral home, cemetery or other providers of merchandise and/or service in a preneed contract that will be responsible for performing a preneed contract.

(f) "Crematory" means an organization as defined in Section 73-11-41.

(g) "Financial institution" means a bank, trust company, savings bank, or savings and loan association chartered or authorized to do business in this state.

(h) "Funeral home" means a business licensed under Section 73-11-55.

(i) "Inflation proof contract" means a preneed contract that establishes a fixed price for funeral services and merchandise without regard to future price increases.

(j) "Insurance" means a life insurance policy, an annuity policy or a Class A or Class B burial insurance policy.

(k) "Merchandise" means personal property associated with the disposal of or memorializing a deceased human being, including, but not limited to, a casket, burial vault, burial clothes, urn or monument.

(*l*) "Preneed contract" means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of merchandise, of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of but shall not mean the furnishing of a cemetery lot, crypt, niche or mausoleum.

(m) "Preneed contract for caskets" means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, that is for the purpose of furnishing or delivering a casket or caskets for the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of.

(n) "Seller" means the person who sells a preneed contract.

(o) "Services" means services of any nature in connection with the final disposition of a dead human body.

(p) "Standard contract" means a preneed contract that applies the trust funds or insurance proceeds to the purchase price of specific funeral services and specific merchandise at the time of death of the contract insured without a guarantee against future price increases.

(q) "Substitute provider" means any funeral home, cemetery, or other provider of merchandise and/or services who furnishes final needs to a beneficiary of a preneed contract sold by another provider regardless of whether the substitute provider honors the terms and conditions of the original preneed contract.

(r) "Trust" means an express trust created by a trust instrument whereby a trustee has the duty to administer a trust asset for the benefit of a named preneed contract insured.

(s) "Trustee" or "trust officer" means an original, added or successor trustee including its successor by merger or consolidation.

(t) "Trust documents" means documents, including, but not limited to, preneed contracts, receipts, contract owner's death certificate, proof of death, the trust agreement, and any and all correspondence between the trustee or trust institution and the contract provider or contract insured.

SOURCES: Laws, 2001, ch. 513, § 2; Laws, 2006, ch. 448, § 1; Laws, 2009, ch. 549, § 1; Laws, 2010, ch. 407, § 2; Laws, 2012, ch. 308, § 1, eff from and after July 1, 2012.

§ 75-63-55. Preneed contracts to be evidenced in writing on forms approved by and on file with Secretary of State; contracts in violation of article and chapter; contents of written preneed contract; contract to be funded by trust or insurance.

(1) No person, firm, partnership, association or corporation may directly or indirectly, or through an agent, engage in the sale of preneed contracts or preneed contracts for caskets except as authorized under this article. Any

person, establishment or company required to register under Section 73-11-67 that sells preneed contracts for caskets, either directly or indirectly or through an agent, shall be required to meet all of the requirements of this article that are applicable to preneed contracts. All preneed contracts sold shall be evidenced in writing on forms approved by and on file with the Secretary of State. No contract form may be used without prior approval of the Secretary of State. No amendment or modification can be made to any preneed contract without prior approval of the Secretary of State. The use of any oral preneed contract, or any written contract, in a form not approved by the Secretary of State, shall be a violation of the chapter and subject to the penalties provided in Section 75-63-69. The contract shall clearly indicate the names and addresses of the buyer, contract insured, contract provider and seller. The Secretary of State may by rule or regulation prescribe specific contract content or a standard contract form required for use by all contract providers describing the rights and responsibilities of the contract provider and the contract owner. However, no standard form contract or contract language shall be inconsistent in any way with the provisions of this article. The Secretary of State is further authorized to implement a systematic method to identify and track preneed contract sales for the purpose of reconciling sales reported to the Secretary of State on the annual report required by Section 75-63-67 with trust fund activity statements and the provider's business records.

(2) The contract shall clearly indicate all merchandise covered by the contract, a description of the merchandise quality, and the total cost of all merchandise covered by the contract. The contract shall list all services covered by the contract and the total cost for all services covered by the contract. The contract shall list all cash advance items covered by the contract and the total cost for all cash advance items covered by the contract.

(3) All preneed contracts sold shall be funded by trust or insurance as defined in this article or evidenced by a warehouse receipt, as contemplated in Uniform Commercial Code-Documents of Title, Section 75-7-101 et seq. All merchandise placed on a warehouse receipt or placed in storage shall be reported to the Secretary of State in the preneed report as required by Section 75-63-67.

(4) If the preneed contract is funded by a policy of insurance, as defined by Section 83-5-5, a copy of the insurance policy shall be furnished to the insured within fifteen (15) days of issue. Such insurance shall be subject to the insurance laws of the state.

The insured shall be furnished the following:

(a) A list of the merchandise, including a description of the merchandise quality, and services which are applied or contracted for in the preneed contract and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(b) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the preneed contract; and

(c) Any penalties or restrictions, including, but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the preneed guarantees.

If the preneed contract is not funded by a policy of insurance, as defined by Section 83-5-5, a copy of the preneed contract shall be furnished to the contract insured at the time of purchase.

(5) If the preneed contract is funded by trust, the contract shall indicate the name, address and telephone number of the trustee; the trust institution; the amount to be paid; the frequency of payment; and the length of time payments will be paid into the trust. The contract insured must initial on the contract the percentage required to be trusted and the designation of the trust officer. In addition, the contract should clearly indicate any exclusions or limitations of the preneed contract including, but not limited to, any additional payments that may be owed if the contract insured dies before the agreed upon payment period is completed.

(6) The preneed contract shall indicate whether it is a standard contract or an inflation proof contract. The contract shall clearly indicate which merchandise and services are guaranteed as to price.

(7) The preneed contract shall contain the address and phone number of the Secretary of State with instructions that consumer complaints may be filed with the Secretary of State.

(8) If the preneed contract is paid in multiple payments, the contract should indicate the amount, frequency and duration of the payments and the amount of any interest charged. The contract shall also include the impact on the contract if payments are not made.

(9) The use of any oral preneed contract, or any written contract, in a form not approved by the Secretary of State, shall be a violation of this article and subject to the penalties provided in Section 75-63-69.

SOURCES: Laws, 2001, ch. 513, § 3; Laws, 2008, ch. 550, § 1; Laws, 2009, ch. 549, § 2; Laws, 2010, ch. 407, § 3, eff from and after July 1, 2010.

Editor's Note — Laws of 2008, ch. 550, § 5 repealed this section, effective July 1, 2009. Since this section was brought forward and amended by Laws of 2009, ch. 549, § 2, which was effective on the same date as the repealer, the section is still in existence, and the repealer in ch. 550 did not repeal the section.

§ 75-63-56. Denial, suspension, revocation, cancelation or nonrenewal of registration; grounds; cease and desist order; freezing of disbursements from trust under exceptional circumstances.

(1) The Secretary of State may deny, suspend, revoke, cancel or nonrenew any registration on the following grounds:

(a) The applicant or registrant has failed to comply with a provision of this article or any valid rule, regulation or order that the Secretary of State has issued;

(b) The registrant has obtained its registration through misrepresentation or fraud or the applicant has attempted to obtain a registration through misrepresentation or fraud;

(c) An officer, director, manager or owner of the applicant or registrant has improperly withheld, misappropriated or converted any monies or properties received in the course of the prepaid funeral contracts business to the registrant's or applicant's own use;

(d) An officer, director, manager or owner of the registrant or applicant has been found to have committed any unfair trade practice or fraud during the course of prepaid funeral contracts business;

(e) The registrant or applicant failed to provide a written response after receipt of a written inquiry from the Secretary of State or his representative as to transactions under the registration within fourteen (14) days after receipt thereof, unless the Secretary of State or his representative knowingly waives the timely response requirement in writing;

(f) The registrant or applicant has refused to be examined or produce any of his accounts, records or files for examination or has failed to cooperate with the Secretary of State in an investigation when requested by the Secretary of State or his representative;

(g) The registrant or applicant is indebted to the Secretary of State for any unpaid fine, penalties or fees;

(h) The registrant or applicant does not possess an active license for the practice of funeral service or a funeral director's license or licensed funeral establishment, if applicable, in good standing from the Mississippi State Board of Funeral Service; or

(i) The registrant or applicant is in violation of any of the provisions contained in the Mississippi Cemetery Law, Section 41-43-31 et seq.

(2) The Secretary of State may issue a cease and desist order, with or without a prior hearing, against the registrant, applicant, or other person or persons engaged in any prohibited act or practice directing them to cease and desist from further illegal activity, including the sale of preneed contracts, when there appears to be an immediate harm or threat of harm to consumers impacting public safety, health or welfare. If the Secretary of State finds in his order that the public health, safety or welfare imperatively requires emergency action, the Secretary of State may also summarily suspend any registration issued by him, but shall promptly hold an administrative hearing regarding the suspension or any order of cease and desist issued without a prior hearing. In those cases, the Secretary of State must convene a full hearing on the issues within ten (10) calendar days of the order of cease and desist or suspension.

(3) In exceptional circumstances where there appears an immediate harm or threat of harm to consumers due to a prohibited act or practice, the Secretary of State may issue an order to any trust officer or trust institution freezing any disbursements from a trust until the time that the Secretary of State may convene a full hearing on the matter prompting the order. In those cases, the Secretary of State shall convene a full hearing on the issues within ten (10) calendar days of the order, after which the Secretary of State may extend or lift the order.

SOURCES: Laws, 2009, ch. 549, § 3, eff from and after July 1, 2009.

§ 75-63-57. Record-keeping requirements.

The contract provider or its successor shall maintain in this state a copy of all preneed contracts and associated accounts, books and records for a period of the lifetime of each contract and for two (2) years after the death of a contract insured. The trustee shall maintain a copy of all trust documents for a period of the lifetime of each contract and for two (2) years after the death of a contract insured.

SOURCES: Laws, 2001, ch. 513, § 4; Laws, 2009, ch. 549, § 4, eff from and after July 1, 2009.

§ 75-63-59. Requirements for contract funded by trust.

(1) If the contract is funded by trust, the Secretary of State shall be given a copy of the trust agreement, which the Secretary of State shall review and approve in advance. The Secretary of State may at any time require the submission of the trust agreement for review and approval from any preneed provider. The Secretary of State shall approve in advance any amendments or modifications to the trust agreement. The Secretary of State shall be informed in writing as to how the assets of the trust are held. In the event of any change in the investment composition of the trust assets, or change in the trustee or trust institution, the Secretary of State shall be informed within ten (10) days after the time the change occurs.

(2) Any trustee, other than a financial institution, shall not be the contract provider, the seller, or an officer or director of the contract provider if the contract provider is a corporation.

(3)(a) In no event may trust funds be loaned, directly or indirectly, to any of the following persons: the preneed provider; any entity in which the preneed provider has any financial interest; any employee, director, member, stockholder, partner, full or partial owner, or principal of the preneed provider; or any person related by blood or marriage to any of those persons.

(b) In no event may trust funds, directly or indirectly, be invested in or with any business or business venture in which any of the following persons have an interest: the preneed provider; any entity in which the preneed provider has any financial interest; any employee, director, member, stockholder, partner, full or partial owner, or principal of the preneed provider; or any person related by blood or marriage to any of those persons.

(4) Not later than the fifth day of the following month from when funds are received, the contract seller shall place in a trust account in a financial institution as defined by this article at least eighty-five percent (85%) of the funds received for funeral services and merchandise. The contract shall disclose to the purchaser in boldface type the percentage of funds the seller is required to trust along with the name of the trust officer, the trust institution, the address and phone number of the same. The purchaser shall initial the corresponding paragraph in the contract indicating notice of the trust percent-

age and acknowledge being provided the name of the trust officer, the trust institution, address and phone number. The contract seller must provide the trustee with documentation containing the contract owner's identity and allocable share for each remittance. Trust accounts shall be carried in the name of the preneed seller, but accounting records shall be established and maintained for each individual preneed funeral contract beneficiary showing the amounts deposited and invested. The Secretary of State may by rule address the recordkeeping required for interest, dividends, increases and accretions earned.

(5) Reasonable annual trust fees including any income taxes owed to the State of Mississippi and/or the United States Treasury may be withheld from the earnings of the trust.

(6) At the time of death, if the contract provider provides the merchandise and services indicated in the contract, the contract provider shall furnish to the trustee a copy of the preneed contract, contract owner's death certificate or proof of death, and a letter of performance indicating that the contracted merchandise and services were provided by the contract provider to the contract insured. Upon receipt of the letter of performance and death certificate, or proof of death, the trustee shall pay to the contract provider all funds, which shall not be less than the amount deposited in trust. In the limited instance only when a preneed provider furnishes a personalized, engraved marker, headstone or monument before death, the trustee may disburse to the preneed provider compensation for the engraved marker, headstone or monument as well as any associated engraving, setting or delivery fees. In those instances, no disbursement from the trust shall be made until the trustee receives from the preneed provider a delivery ticket or invoice, documentation for the engraving of identifying information regarding the purchaser, and a letter of performance indicating that the engraved marker, headstone or monument has been provided.

Any trust officer or trust institution that releases trust funds for funeral services or merchandise in a manner contrary with the provisions of this article shall be liable for the same. Furthermore, any trustee or trust institution that engages in fraud, deceit, misrepresentation, or misappropriation of trust funds to the detriment of a contract provider or a contract insured shall be liable for the same.

(7) If a substitute provider was named by the contract beneficiary, during his life, or by one with the legal authority to act on his behalf at any time, the substitute provider shall provide the trustee with a death certificate or published obituary along with an invoice verifying that the substitute provider serviced the final needs of the beneficiary. Within ten (10) days of receipt of the documentation of death and invoice from the substitute provider, the trustee shall pay the substitute provider or the estate of the contract beneficiary not less than the amount deposited in trust on behalf of the serviced beneficiary. For all trust funded preneed contracts sold on or after July 1, 2012, the trustee shall pay the substitute provider not less than the amount deposited into trust on behalf of the serviced beneficiary in addition to all earnings, interest and income on the beneficiary's principal.

(8) Preneed trust funds are exempt from all claims of creditors of the preneed provider, except as to the claims of the contract purchaser or his representatives, and cannot be used as collateral, pledged or in any way encumbered or placed at risk.

SOURCES: Laws, 2001, ch. 513, § 5; Laws, 2006, ch. 472, § 1; Laws, 2009, ch. 549, § 5; Laws, 2012, ch. 308, § 2, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error at the end of subsection (3)(b) by substituting "any of those persons" for "any of those person." The Joint Committee ratified the correction at its August 16, 2012, meeting.

§ 75-63-61. Requirements for contract funded by insurance.

(1) If the preneed contract is funded with insurance, and payment is made to the contract seller rather than directly to the life insurance company, the contract seller shall timely submit to the insurance company all premiums collected from the contract purchaser.

(2) At the time of death, the proceeds of the policy shall be settled in accordance with the policy. If the contract provider furnishes merchandise and services as indicated in the contract, the contract provider is entitled to retain the proceeds of the policy in accordance with the preneed contract. If the contract provider does not furnish merchandise and/or services as provided in the preneed contract, the contract provider shall pay to the estate of the contract insured or the substitute provider of the merchandise and/or services the proceeds of the policy within ten (10) days of receipt of these proceeds.

SOURCES: Laws, 2001, ch. 513, § 6; Laws, 2009, ch. 549, § 6, eff from and after July 1, 2009.

§ 75-63-63. Preneed contracts to be portable; who may name a substitute provider.

Preneed contracts entered into in this state shall be portable. The naming of a substitute provider shall be in writing by the contract beneficiary or by one who is authorized by law to act on their behalf. If the preneed contract is funded by trust, the notice of a substitute provider shall be made to the original preneed contract seller and the trustee holding funds for the beneficiary. Upon receipt of the notice of substitute provider, the original provider shall be relieved of all obligations to perform the contract including all obligations of reporting and accounting. If the preneed contract is funded by insurance, the change of beneficiary shall be made in writing to the insurance company. If for any reason insurance proceeds are paid to a preneed seller who did not furnish the final needs of the beneficiary at their time of need, the policy proceeds shall be paid in full to the substitute provider or the estate of the preneed beneficiary within ten (10) days of receipt.

SOURCES: Laws, 2001, ch. 513, § 7; Laws, 2012, ch. 308, § 3, eff from and after July 1, 2012.

§ 75-63-65. Sellers of preneed contracts required to register with Secretary of State; registration fees; regulations and registration requirements; registration forms.

(1) Any establishment or organization that engages in the business of selling preneed merchandise and/or services shall register with the Secretary of State and shall pay a registration fee. A separate registration is required for each separate corporation or business entity. Applicants for registration shall provide the Secretary of State with any information and documents as he may require. The establishment or organization shall pay to the Secretary of State for the initial registration of the main establishment or organization a fee of Two Hundred Fifty Dollars ($250.00). For each year thereafter, the registration fee shall be Fifty Dollars ($50.00) per year due at the time that the annual report is required to be filed with the Secretary of State.

(2) Any person who engages in the business of selling preneed contracts shall register with the Secretary of State and shall be subject to the rules and regulations promulgated by the Secretary of State as provided in this article.

(3) The Secretary of State shall establish regulations to register each establishment or organization selling preneed merchandise or services. No establishment or organization shall be registered to sell preneed merchandise or services that the establishment or organization cannot lawfully provide at the time of a person's death. The Secretary of State shall also maintain a record of all individuals who are registered to sell preneed merchandise or services through the registered establishment.

(4) The Secretary of State shall establish regulations to register each person selling preneed contracts, including the establishment through which the seller will be selling. No person shall be registered to sell preneed contracts without indicating the establishment for which he is selling. Only a registered preneed establishment can sponsor a person for registration. The preneed operator shall inform the Secretary of State of any changes with its sales agents within thirty (30) calendar days of the same.

(5) The Secretary of State shall develop and furnish the forms necessary for the registration of establishments and individuals selling preneed contracts.

SOURCES: Laws, 2001, ch. 513, § 8; Laws, 2008, ch. 550, § 2; Laws, 2009, ch. 549, § 7, eff from and after July 1, 2009.

Editor's Note — Laws of 2008, ch. 550, § 5 repealed this section, effective July 1, 2009. Since this section was brought forward and amended by Laws of 2009, ch. 549, § 2, which was effective on the same date as the repealer, the section is still in existence, and the repealer in ch. 550 did not repeal the section.

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A registering establishment or organization may have a contractual arrangement with another entity to provide the services. Nelson, Nov. 21, 2003, A.G. Op. #03-0588.

§ 75-63-67. Annual written or electronic reports of preneed contract sales and of all trust fund account activity to be submitted to Secretary of State; penalty for late reports.

(1) Every preneed establishment shall annually submit a written or electronic report to the Secretary of State of its preneed contract sales and performance of those contracts. This report shall be filed on or before March 31 of each year for the calendar year ending the preceding December 31. The Secretary of State shall impose an administrative fine in the amount of One Hundred Dollars ($100.00) per day for each day that the report is late. The administrative fine shall be in addition to any other administrative penalties provided under this article. The Secretary of State shall promulgate rules and regulations to regulate preneed contracts and the duties and responsibilities of preneed establishments; the content and filing procedure of reports; and filings of additional reports if deemed necessary by the Secretary of State to carry out the purposes of this article. The Secretary of State may assess any fines and fees necessary to carry out the provisions of this article.

(2) Every preneed trust officer or trust financial institution shall annually submit to the Secretary of State a statement of all trust fund account activity on or before March 31 of each year for the calendar year ending the preceding December 31. The statement or report shall reflect the trust balance as of December 31 for the preceding calendar year. The Secretary of State is authorized to assess a penalty against the trust institution for each day the statement is late, not to exceed Five Hundred Dollars ($500.00) in any one (1) year.

SOURCES: Laws, 2001, ch. 513, § 9; Laws, 2008, ch. 550, § 3; Laws, 2009, ch. 549, § 8, eff from and after July 1, 2009.

Editor's Note — Laws of 2008, ch. 550, § 5 repealed this section, effective July 1, 2009. Since this section was brought forward and amended by Laws of 2009, ch. 549, § 2, which was effective on the same date as the repealer, the section is still in existence, and the repealer in ch. 550 did not repeal the section.

§ 75-63-68. Conversion of trust funded prepaid funeral benefits to insurance funded prepaid funeral benefits or annuity contract upon appeal to Secretary of State; written disclosure of terms to affected preneed purchasers.

A registered preneed contract provider may convert trust funded prepaid funeral benefits to insurance funded prepaid funeral benefits or annuity contracts upon appeal to the Secretary of State. If approved, the Secretary of

State shall issue an order authorizing the withdrawal of funds for the provider to purchase preneed insurance or annuity contracts. The preneed seller shall disclose in writing to all affected preneed purchasers the terms of the insurance policy or annuity contract. Except as provided in this section, no funds deposited in trust with a trustee shall be withdrawn by the trustee to purchase a preneed insurance policy or annuity contracts.

SOURCES: Laws, 2009, ch. 549, § 9; Laws, 2012, ch. 308, § 4, eff from and after July 1, 2012.

§ 75-63-69. Sanctions for violations; procedural requirements; appeal.

(1) Whenever it appears to the Secretary of State that any person has engaged, or is about to engage, in any act or practice constituting a violation of any provision of this article or any rule or order under this article, he may, in his discretion, seek any or all of the following remedies:

(a) Issue a cease and desist order with a prior hearing against the person or persons engaged in the prohibited activities directing them to cease and desist from further illegal activity;

(b)(i) Issue an order in the case of any person, partnership or, if a corporation, the officers and directors who sell or offer to sell preneed contracts, or other person who violated this article, imposing an administrative penalty up to a maximum of One Thousand Dollars ($1,000.00) for each offense, and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings, with total penalties not to exceed Ten Thousand Dollars ($10,000.00) in any of those proceedings, to be paid to the Secretary of State and requiring reimbursement to the Secretary of State for all costs and expenses incurred in the investigation of the violation(s) and in the institution of administrative proceedings, if any, as a result thereof;

(ii) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under paragraph (b) (i) of this subsection, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this article or a rule promulgated under this article, or an order of the Secretary of State, the number of persons adversely affected by the conduct and the resources of the person committing the violation;

(c) Bring an action in chancery court to enjoin the acts or practices to enforce compliance with this article or any rule or order under this article. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the Secretary of State, the court may enter an order of rescission or restitution directed to any person who has engaged in any act constituting a violation of any provision of this article or any rule or order under this article, or the court may impose a civil penalty up to a maximum of One Thousand Dollars ($1,000.00) for each offense, and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings, with total penalties not to exceed Ten Thousand Dollars ($10,000.00) in any of those proceedings. The court may not require the Secretary of State to post a bond.

(2) The Secretary of State may, with a prior hearing, suspend or revoke any preneed establishment or salesperson registration for violation of statutes, regulations, or an order issued under this article.

(3) Any person, partnership or, if a corporation, the officers and directors who sell or offer to sell a preneed contract with a suspended or revoked registration shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment for a term of not more than one (1) year, or both fine and imprisonment.

(4) Any person, partnership or, if a corporation, the officers and directors who embezzle or fraudulently or knowingly and willfully misapply or convert preneed funds shall, upon conviction, be punished by imprisonment in the custody of the Mississippi Department of Corrections for a term of not less than ten (10) years, or be fined not more than One Thousand Dollars ($1,000.00) and imprisoned in the county jail not more than one (1) year, or both fine and imprisonment. Each such violation shall constitute a separate offense.

(5) Upon reasonable belief that a person or corporation is acting in violation of the portions of this article requiring fines or imprisonment, the Secretary of State shall immediately report this violation accompanied by all relevant records to the Insurance Integrity Enforcement Bureau within the Office of Attorney General created in Section 7-5-301, or to the district attorney, county or municipal attorney having jurisdiction for the same.

(6) No order shall be entered under this section without the following:

(a) An appropriate prior notice to the applicant or registrant;

(b) An opportunity for a hearing; and

(c) Written findings of fact and conclusions of law.

(7) Any person aggrieved by a final order of the Secretary of State may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in the court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part. A copy of the petition shall be forthwith served upon the Secretary of State and thereupon the Secretary of State shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part.

SOURCES: Laws, 2001, ch. 513, § 10; Laws, 2009, ch. 549, § 10; Laws, 2016, ch. 447, § 2, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment added (7).

§ 75-63-70. Joint and several liability of preneed operator's managers, officers, directors, etc.

Upon a finding by a court of competent jurisdiction of failure to maintain or deposit in the trust account as required by this article, or of fraud, theft or misconduct by the preneed operator's managers, officers, directors or others who are personally responsible for the waste or unlawful depletion of trust funds, the managers, officers, directors or others may be jointly and severally liable for any deficiencies in the trust account as required by this article.

SOURCES: Laws, 2009, ch. 549, § 11, eff from and after July 1, 2009.

§ 75-63-71. Disclosure of information contained in registrations, statements, applications, and reports; confidentiality of information obtained through investigation or examination.

The information contained in or filed with any registration, statement, application or report may be made available to the public under such rules as the Secretary of State prescribes. Information in the possession of, filed with or obtained by the Secretary of State in connection with any investigation or examination under this article shall be confidential and exempt from the requirements of the Mississippi Public Records Act of 1983. No such information may be disclosed by the Secretary of State, or any of his officers or employees, unless necessary or appropriate in connection with a particular investigation or proceeding under this article or for any law enforcement purpose.

SOURCES: Laws, 2001, ch. 513, § 11, eff from and after Jan. 1, 2002.

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

§ 75-63-73. Examination of business or person offering preneed funeral services and merchandise; records open to inspection; subpoena power of Secretary of State.

The Secretary of State shall, as often as he deems necessary, examine the business of any person or business offering preneed funeral services and merchandise, whether or not registered in compliance with this article. Any person or business so examined shall produce, upon request, all records requested by the Secretary of State's examiners. Any trustee or trust institution for a preneed funeral trust shall disclose to the Secretary of State any information regarding preneed trust accounts maintained by the trustee.

The records in the possession of any insurance company, third-party administrator, burial association, banking or trust institution, investment services company, funeral home establishment, crematory, cemetery, or any vendor, person or entity are open to inspection to any of the Secretary of State's examiners or investigators carrying out the provisions of this article.

For the purpose of any investigation or proceeding under this article, the Secretary of State, or any officer designated by him, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records in the possession of any insurance company, third-party administrator, burial association, banking or trust institution, investment services company, funeral home establishment, crematory, cemetery, or any vendor, person or entity, whether located within or outside of this state, that the Secretary of State deems relevant or material to the inquiry.

SOURCES: Laws, 2001, ch. 513, § 12; Laws, 2009, ch. 549, § 12, eff from and after July 1, 2009.

§ 75-63-75. Article does not constitute authorization for unlicensed persons to sell life insurance.

Nothing in this article shall be construed to authorize the sale of life insurance policies by unlicensed insurance producers which is prohibited by Section 83-17-55, Mississippi Code of 1972.

SOURCES: Laws, 2001, ch. 513, § 13, eff from and after Jan. 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected two errors in this section. The reference to "unlicensed agents" was changed to read "unlicensed insurance producers" and the reference to "Section 83-17-105" was changed to read "Section 83-17-55." The Joint Committee ratified these corrections at its August 5, 2008, meeting.

§ 75-63-77. Change of ownership or control; verified change of ownership application; contents; approval by Secretary of State; liability of seller and buyer.

(1) The seller shall apply for change of ownership or control when:

(a) The seller transfers all or a portion of the interest in any contract for prepaid funeral merchandise or services;

(b) The seller transfers one or more of its establishments for providing funeral merchandise or services;

(c) All or a portion of the equity ownership of a seller has been transferred that will result in a change of:

(i) The sale of more than fifty percent (50%) of the interest of a seller when the seller is a corporation;

(ii) Ownership of a seller when the seller is other than a corporation;

(d) The seller transfers all of its business assets relating to providing funeral merchandise or services; or

(e) The seller terminates its business of providing funeral merchandise or services.

(2) At least fifteen (15) days before the proposed occurrence of an event described in subsection (1) of this section, the seller shall file a verified change of ownership application with the Secretary of State, which shall contain the following:

(a) The name and address of the seller;

(b) The name and address of the organization proposing to acquire property of the seller, hereinafter referred to as the "transferee";

(c) A description of the property and of the proposed transaction, as set forth in subsection (1) of this section;

(d) An accounting of the trust fund and all outstanding contracts, which accounting shall contain all the information required in the annual report, prepared as of a date within thirty (30) days of the required application filing date;

(e) Any required documents or amendments thereto relating to the trust fund;

(f) A copy of any notice proposed to be sent to the contract buyers after the transfer;

(g) A filing fee of One Hundred Dollars ($100.00); and

(h) Any other information that may reasonably be required by the Secretary of State by rule or order.

(3) The Secretary of State must approve the change in ownership or control. The Secretary of State shall approve the seller's application for change of ownership by written authorization if:

(a) The transferee set forth in the application holds a valid, current registration under the provisions of this article;

(b) The accounting required is complete, accurate, and reflects the trust fund whole and intact; and

(c) All required information and documents are filed with and approved by the Secretary of State.

(4) The Secretary of State shall have the authority by rule or order to waive or reduce any of the requirements contained in subsection (2) of this section as not being necessary or appropriate in the public interest or for the protection of the contract purchasers.

(5) The seller, or its interest therein, shall remain liable for all funds and transactions to the effective date of the transfer. The buyer shall be liable for all funds and transactions thereafter.

(6) Any shortages in the trust fund due to the failure to properly capitalize the trust in accordance with Section 75-63-59 shall be funded by the preneed seller or new owner before closing. Nothing provided in this section shall alleviate or excuse the purchaser from exercising due diligence in the transaction before closing.

SOURCES: Laws, 2009, ch. 549, § 13, eff from and after July 1, 2009.

§ 75-63-79. Procedure upon cessation of business or revocation or suspension of registration to sell preneed funeral contracts.

(1) If a preneed provider ceases to do business or the provider's license issued by the State Board of Funeral Service is revoked or suspended or the registration to sell preneed funeral contracts is revoked or lapsed and application for a replacement registration has not been filed, the provider shall within thirty (30) days submit to the Secretary of State a complete listing of names and addresses of all active contracts. The provider shall also notify all contract purchasers in writing that their contracts are to be transferred to another registered provider of the purchaser's choice. The Secretary of State shall review and approve the form of the notice. The transferor shall then transfer the contracts and notify the Secretary of State of the providers selected within sixty (60) days of the termination of the preneed registration. All contracts funded by burial insurance or trust funds together with interest are to be transferred. The selling provider forfeits its right to any monies it otherwise would be entitled. If the provider fails to provide for the transfer of contracts within sixty (60) days, the purchasers may directly request the trust officer to transfer the account balance to another provider selected by the purchaser. The purchaser may also request that an insurance company assign another provider as beneficiary for the insurance policy.

(2) The Secretary of State has jurisdiction over the provider and the burial insurance policy or trust funds together with interest of all active contracts, and has the authority to accomplish the necessary transfer of preneed funeral contracts and trust funds in all cases in which the terminating provider has failed to effectuate the transfer to a registered provider within four (4) months of the date the provider's license issued by the State Board of Funeral Service was cancelled or the registration to sell preneed funeral contracts was terminated.

SOURCES: Laws, 2009, ch. 549, § 15, eff from and after July 1, 2009.

§ 75-63-81. Preneed Contracts Loss Recovery Fund; creation, purpose, administration, loss recovery fee, reimbursement for claims; prohibition against use of existence of fund for sales, solicitation, or inducement to purchase contract; Preneed Contracts Loss Recovery Association; directors, appointment, compensation; appeals.

(1) There is established a Preneed Contracts Loss Recovery Fund, hereinafter referred to as the "fund," to be administered by directors of the Preneed Contracts Loss Recovery Association, hereinafter referred to as the "association." Directors are to be appointed by the Secretary of State. The purpose of the fund is to reimburse the estates, or in the absence of an estate filing, the purchaser or applicant with payment jointly to the funeral home providing services or merchandise or both, of beneficiaries of preneed funeral contracts

who have suffered financial loss as a result of the misfeasance, fraud, default, failure or insolvency of a registered Mississippi preneed provider.

(2) The fund shall be funded from a charge not to exceed Ten Dollars ($10.00) to be added to the cost of every preneed contract sold from and after July 1, 2009; however, if the preneed contract is funded solely with insurance that is protected by the Mississippi Life and Health Insurance Guaranty Association, then that fee shall not be charged. The association may reduce, suspend or resume collection of the fee at any time and for any period to ensure that a sufficient amount is available to meet anticipated disbursements and to maintain an adequate reserve consistent with actuarial guidance.

The per-contract fees shall be remitted quarterly to the association for each quarter of the calendar year with a quarterly fee form as prescribed by the Secretary of State. The per-contract fee is not subject to the trusting requirements of Section 75-63-59. The fees shall be remitted to the association no later than fifteen (15) days after each quarter. Absent the Secretary of State's approval of an extension for good cause shown, preneed providers failing to timely report and remit the per-contract fee to the association may be subject to a penalty of One Hundred Dollars ($100.00) per day for each day of delinquency, payable to the fund.

(3) All sums received by the association shall be held in a separate account maintained by the State Treasurer to be used solely as provided in this article. Warrants to the fund may only be issued by the Department of Finance and Administration upon request by a majority vote of the directors of the Preneed Contracts Loss Recovery Association. All interest or other income earned on the fund shall be retained by the fund.

(4) Reimbursements from the fund must not exceed the total payment made for preneed funeral services or merchandise, cemetery services or merchandise, or both. No current insurance benefits or future graduated insurance benefits may be reimbursed, including any current or future graduated insurance benefits in any insurance company insolvency guaranty fund association. Upon the death of the beneficiary and the applicant's compliance with all applicable rules of the association, reimbursement from the fund may be made to the estate of the beneficiary, the purchaser or applicant with payment jointly to the funeral home or cemetery providing services or merchandise or both, only to the extent to which losses are not bonded or otherwise covered. If the association makes payments from the fund under this section, the association is subrogated in the reimbursed amount and may bring an action against any person or entity, including a preneed provider. The association may enforce claims it may have for restitution or otherwise and may employ and compensate from the fund consultants, legal counsel, accountants and other persons it considers appropriate to assure compliance with this section.

(5) The association shall investigate all applications made and may reject or allow claims in whole or in part. Payment may be made only to the extent that monies are available in the fund, and payments may be prorated among claimants. Reimbursements for completed claims must be processed subject to

availability of monies in the fund. The association has complete discretion to determine the order and manner of payment of approved applications. The association may approve one (1) application, in whole or in part, that includes more than one (1) reparation claim for the benefit of purchasers of prepaid contracts of an insolvent registrant as part of a plan to arrange for another registrant to assume the obligations of the licensee being liquidated if the association finds that the plan is reasonable and is in the best interests of the contract beneficiaries. All payments are a matter of privilege and not a right, and no person has a right in the fund as a third-party beneficiary or otherwise.

(6) The association shall develop a form of application for reimbursement.

(7) This fund and all interest earned may be used only as prescribed in this section and may not be used for any other purposes to the extent losses are not bonded, insured, or otherwise covered, protected or reimbursed. Further, all monies deposited into the fund shall not be subject to any deduction, tax, judgment lien, levy, or any other type of assessment except as may be provided in this article. The association may expend monies from the fund to:

(a) Make reimbursements on approved applications;

(b) Purchase insurance to cover losses and association liability as considered appropriate by the directors and not inconsistent with the purpose of the fund;

(c) Invest portions of the fund as are not currently needed to reimburse losses and maintain adequate reserves, as are permitted to be made by fiduciaries under state law;

(d) Pay the expenses of the association for administering the fund, including employment of legal counsel, accountants, consultants and other persons the board considers necessary to assure compliance with this section.

(8) No person may make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter, poster or over any radio station or television station, or in any other way, any advertisement, announcement, or statement that uses the existence of the fund for the purpose of sales, solicitation or inducement to purchase any form of preneed contract covered under this article.

(9) The Secretary of State may establish rules and regulations necessary to implement the purposes of the section including, but not limited to, rules governing the association's operations, claim procedures, determination of solvency or insolvency of a preneed provider, claimant eligibility and determination of appropriate loss payee.

(10) No purchaser or representative of a purchaser is provided in this section with any administrative right or legal or equitable right to any funds collected for this association to satisfy any judgment or economic loss of the purchaser from a prepaid funeral or cemetery organization except for the purposes of this section. This fund is established for the discretionary relief of purchasers and their representatives of prepaid funeral or cemetery contracts

from insolvent prepaid funeral or cemetery organizations or prepaid funeral businesses with severe trust fund account shortages as determined by the directors. Coverage is limited to the claimant's actual contract payments made. There shall be no fund coverage for additional economic damages, attorney's fees, recovery costs, interest, other equitable relief or noneconomic damages.

Further, no claimant shall be eligible for compensation from the fund unless the contract purchaser for whom a claim is asserted paid to the preneed provider the loss recovery fee required by subsection (2) of this section. The fund shall have no liability for preneed contracts sold or claims that occurred or accrued before July 1, 2009.

(11) There shall be no liability on the part of and no cause of action of any nature shall arise against any director of the association, the Secretary of State, his representatives, agents or employees for any act or omission by them in the performance of their powers and duties under this article, or in its administration, dispensation, handling or collection of funds for the program.

(12) Directors of the association shall be appointed by the Secretary of State and shall consist of no fewer than five (5), one (1) from each of the Mississippi Supreme Court Districts and two (2) from the state at large. In making director appointments the Secretary of State shall consider, among other things, whether all association members are fairly represented. At least three (3) of the directors must possess five (5) years or more experience in the preneed funeral service and merchandise business as an owner or manager. All directors shall be appointed for staggered six-year terms, with the exception of the initial terms of service for the original five (5) directors. The Secretary of State may appoint any director to a successive six-year term. The initial term of service for all directors shall begin on October 1, 2009, with the initial term of two (2) directors to be determined by the Secretary of State at appointment expiring on September 30, 2011, and two (2) directors to be determined by the Secretary of State at appointment expiring on September 30, 2013. The initial term for the remaining director to be determined by the Secretary of State at appointment shall expire on September 30, 2015.

(13) Compensation for a director may be paid from the fund, and compensation is limited to Fifty Dollars ($50.00) per day only for each travel day and meeting day designated by the Secretary of State in addition to a per diem amount designed to compensate directors for reasonable meal allowances, travel and lodging expenses, if needed, to attend meetings of the association directors.

(14) The association and its directors shall assist the Secretary of State and be subject to the applicable provisions of the laws of this state. The association shall be subject to examination and regulation by the Secretary of State. The association by its directors shall prepare and submit to the Secretary of State each year, not later than March 1 of each year, a financial report in a form approved by the Secretary of State and a report of activities during the preceding calendar year.

(15) Appeal rights for claim decisions issued by the association directors exist in the chancery court in this state in which an estate has been open for

probate by the representative of the claimant; the chancery court in the county in which the preneed contract was purchased; or the chancery court in this state of the claimant's or decedent's home county. A notice of appeal must be filed within thirty (30) days of the association's written order denying the claim in whole or in part, and appeal to chancery court is limited to a review of the record made before the association's directors on a substantial evidence evidentiary standard.

SOURCES: Laws, 2009, ch. 549, § 14, eff from and after July 1, 2009.

CHAPTER 65

Going Out of Business Sales; Unsolicited Goods

Going Out of Business Sales 75-65-1
Unsolicited Goods 75-65-101

GOING OUT OF BUSINESS SALES

Sec.
75-65-1. Definitions.
75-65-3. Permit required; application for permit; bond; duties of chancery clerks and clerks of municipalities.
75-65-5. Additions to stock in contemplation of closing out sale.
75-65-7. Adding merchandise to stock during sale.
75-65-9. Extension of time for holding sale; resumption of business after sale's conclusion.
75-65-11. Violations of law; penalties.
75-65-13. Official sales excluded.
75-65-15. Chancery court may enjoin violations.
75-65-17. Waiver of provisions of law.

§ 75-65-1. Definitions.

For the purposes of Sections 75-65-1 through 75-65-17, "closing-out sale" shall mean and include all sales advertised, represented or held forth under the designation of "going out of business," "discontinuance of business," "selling out," "liquidation," "lost our lease," "must vacate," "forced out," "removal," or any other designation of like meaning; and "person" shall mean and include individuals, partnerships, voluntary associations and corporations.

SOURCES: Codes, 1942, § 5152-01; Laws, 1966, ch. 392, § 1, eff from and after July 1, 1966.

ATTORNEY GENERAL OPINIONS

Section 75-65-1 et seq. apply to a specific store, not an entire corporation; if a corporation or small business owners hold a going out of business sale, these business owners are not prohibited from reopening a different type of business at a different location in the municipality. Holloway, Oct. 27, 2000, A.G. Op. #2000-0618.

RESEARCH REFERENCES

CJS. 15 C.J.S., Commerce § 101, 102, 104, 107.

§ 75-65-3. Permit required; application for permit; bond; duties of chancery clerks and clerks of municipalities.

(1) No person shall advertise or offer for sale a stock of goods, wares or merchandise under the description of closing-out sale, or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, unless he first

shall have obtained a permit to conduct such sale from the chancery clerk of the county in which such sale is to take place; or if such sale is to take place within a municipality, said person shall apply for and procure such permit from the city clerk of the municipality. The applicant for such permit shall make to such clerk an application therefor in writing and under oath at least fourteen (14) days prior to the opening date of sale, showing all the facts relating to the reasons and character of such sale, including the opening and terminating dates of the proposed sale, a complete inventory of the goods, wares, or merchandise actually on hand in the place where such sale is to be conducted, and all details necessary to locate exactly and identify fully the goods, wares or merchandise to be sold; providing, however, that an application for a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise may be obtained within three (3) days prior to the opening date of the sale. The terminating date of such proposed sale shall be no later than seventy-five (75) days immediately following the date of such permit application.

(2) If such clerk shall be satisfied from said application that the proposed sale is of the character which the applicant desires to advertise and conduct, he shall issue a permit upon the application therefor, together with a bond, payable to the city, village or town in the penal sum of one thousand dollars ($1,000.00), conditioned upon compliance with Sections 75-65-1 through 75-65-17, to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application. Any merchant who shall have been conducting a business in the same location where the sale is to be held for a period of not less than one (1) year, prior to the date of holding such sale, shall be exempted from the filing of the bond herein provided.

(3) Every city, town or village clerk to whom application is made shall endorse upon such application the date of its filing, and shall preserve the same as a record of his office, and shall make an abstract of the facts set forth in such application, and shall indicate whether the permit was granted or refused.

(4) Any person making a false statement in the application provided for in this section shall, upon conviction, be deemed guilty of perjury.

SOURCES: Codes, 1942, § 5152-02; Laws, 1966, ch. 392, § 2, eff from and after July 1, 1966.

Cross References — Municipal regulation of closing-out sales, fire sales, etc., see § 21-19-37.

Crime of perjury, see § 97-9-59.

§ 75-65-5. Additions to stock in contemplation of closing out sale.

No person in contemplation of a closing-out sale under a permit as provided for in Section 75-65-3 shall order any goods, wares or merchandise for the purpose of selling and disposing of the same at such sale, and any unusual purchase and additions to the stock of such goods, wares or merchandise within sixty (60) days prior to the filing of application for a permit to conduct such sale shall be presumptive evidence that such purchases and additions to stock were made in contemplation of such sale.

SOURCES: Codes, 1942, § 5152-03; Laws, 1966, ch. 392, § 3, eff from and after July 1, 1966.

§ 75-65-7. Adding merchandise to stock during sale.

No person carrying on or conducting a closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, under a permit as provided in Section 75-65-3 shall, during the continuance of such sale, add any goods, wares or merchandise to the damaged stock inventoried in his original application for such permit, and no goods, wares or merchandise shall be sold as damaged merchandise at or during such sale, excepting the goods, wares or merchandise described and inventoried in such original application.

SOURCES: Codes, 1942, § 5152-04; Laws, 1966, ch. 392, § 4, eff from and after July 1, 1966.

§ 75-65-9. Extension of time for holding sale; resumption of business after sale's conclusion.

No person shall conduct a closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise beyond the termination date specified for such sale, except that one (1) extension of thirty (30) days may be authorized upon proper showing of need; nor shall any person, upon conclusion of such sale, continue that business which had been represented as closing out or going out of business under the same name, or under a different name, at the same location, or elsewhere in the same city, town or village where the inventory for such sale was filed; nor shall any person, upon conclusion of such sale, continue business contrary to the designation of such sale.

SOURCES: Codes, 1942, § 5152-05; Laws, 1966, ch. 392, § 5, eff from and after July 1, 1966.

§ 75-65-11. Violations of law; penalties.

Any person who shall advertise, hold, conduct or carry on any sale of goods, wares or merchandise under the description of closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, contrary to the provisions of Sections 75-65-1 through 75-65-17, or who shall violate any of the provisions of said sections shall be deemed guilty of a misdemeanor.

SOURCES: Codes, 1942, § 5152-06; Laws, 1966, ch. 392, § 6, eff from and after July 1, 1966.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-65-13. Official sales excluded.

The provisions of Sections 75-65-1 through 75-65-17 shall not apply to sheriffs, constables or other public or court officers, or to any other person or persons acting under the permit, direction or authority of any court, state or federal, selling goods, wares or merchandise in the course of their official duties.

SOURCES: Codes, 1942, § 5152-07; Laws, 1966, ch. 392, § 7, eff from and after July 1, 1966.

§ 75-65-15. Chancery court may enjoin violations.

Upon complaint of any person, the applicable chancery court shall have jurisdiction in equity to restrain and enjoin any act forbidden or declared illegal by any provisions of Sections 75-65-1 through 75-65-17.

SOURCES: Codes, 1942, § 5152-08; Laws, 1966, ch. 392, § 8, eff from and after July 1, 1966.

Cross References — Injunctions, generally, see § 11-13-1.

§ 75-65-17. Waiver of provisions of law.

Provided, however, that the governing authorities of any county or municipality as the case may be are authorized herein to waive the entire provisions of Sections 75-65-1 through 75-65-17 in the case of any person upon a showing of facts to the satisfaction of said governing authorities that said person is for any cause actually and legitimately going out of business or conducting a sale of goods, wares or merchandise damaged by fire, smoke or otherwise. The governing authorities may likewise rescind any such waiver granted when in its opinion the applicant is no longer entitled to the privileges of the waiver previously granted.

SOURCES: Codes, 1942, § 5152-09; Laws, 1966, ch. 392, § 9, eff from and after July 1, 1966.

Cross References — Municipal regulation of closing-out sales, fire sales, etc., see § 21-19-37.

ATTORNEY GENERAL OPINIONS

A waiver under the statute is in effect unless and until the governing authorities rescind the waiver; complaints from other business owners that the business is not actually and legitimately going out of business are factors that the governing authorities may consider when deciding whether to rescind a waiver. Holloway, Oct. 27, 2000, A.G. Op. #2000-0618.

UNSOLICITED GOODS

SEC.
75-65-101. Offering goods for sale by unsolicited sending prohibited; unconditional gift to recipient.

§ 75-65-101. Offering goods for sale by unsolicited sending prohibited; unconditional gift to recipient.

No person, firm, partnership, association or corporation, or agent or employee thereof, shall in any manner or by any means offer for sale goods, wares or merchandise where the offer includes the voluntary and unsolicited sending of goods, wares or merchandise not actually ordered or requested by the recipient, either orally or in writing. The receipt of any such unsolicited goods, wares or merchandise shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of the same in any manner he sees fit without any obligation on his part to the sender.

SOURCES: Codes, 1942, § 278.7; Laws, 1970, ch, 350, § 1, eff from and after passage (approved March 4, 1970).

CHAPTER 66

Home Solicitation Sales

Sec.
75-66-1. Definitions.
75-66-3. Buyer's right of cancellation; notice.
75-66-5. When buyer's signature required on agreement or offer to purchase or attached statement; contents of documents; effect of seller's failure to comply with section.
75-66-7. Tender to buyer on cancellation or revocation; retention of cancellation fee; rights of buyer on seller's failure to act.
75-66-9. Tender to seller on cancellation or revocation; place; demand; time; buyer's duty with respect to goods; compensation for services performed.
75-66-11. Chapter inapplicable to insurance sales or solicitations.

§ 75-66-1. Definitions.

(1) "Home solicitation sale" means a consumer credit sale of goods or services in which the seller or person acting for him engages in a personal solicitation of the sale at a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. It does not include a sale made pursuant to a preexisting revolving charge account, or a preexisting installment account allowing a series of sales, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or where the sale is initiated by the buyer, or where the seller is regulated by the Mississippi Public Service Commission. Where the first contact has been made by the seller or by someone on behalf of the seller, then any home solicitation sale made following such contact shall not be deemed to have been initiated by the buyer.

(2) "Consumer Credit Sale" is a sale of goods or services in which:

(a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;

(b) the buyer is a person other than an organization;

(c) the goods or services are purchased primarily for a personal, family or household purpose; and

(d) either the debt is payable in installments or a credit service charge is made.

SOURCES: Laws, 1974, ch. 532, § 1, eff from and after July 1, 1974.

Cross References — Sales, generally, see § 75-2-201 et seq.

Consumer contracts with health spas, see § 75-83-1 et seq.

Regulation of contracts between out-of-state principals and commissioned sales representatives as not including persons engaged in home solicitation sales regulated pursuant to this chapter, see § 75-87-1.

Mississippi Public Service Commission generally, see § 77-1-1 et seq.

JUDICIAL DECISIONS

1. In general.

Court found that where defendants visited plaintiffs at plaintiffs' home to sell vinyl siding as result of referral by plaintiffs' neighbor and not at plaintiffs' request, transaction constituted "home solicitation sale" within meaning of Miss Code § 75-66-1. 4. Cole v. Lovett, 672 F. Supp. 947 (S.D. Miss. 1987), aff'd, 833 F.2d 1008 (5th Cir. 1987).

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection §§ 196-198, 201-203.

§ 75-66-3. Buyer's right of cancellation; notice.

(1) Except as provided in subsection (5) of this section, in addition to any right otherwise to revoke an offer, cancel a contract or rescind a contract, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day at which the buyer signs an agreement or offer to purchase which complies with this chapter.

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by certified or registered mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and

(a) the seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and

(b) in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

SOURCES: Laws, 1974, ch. 532, § 2, eff from and after July 1, 1974.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation made a stylistic correction in subsection (1) by substituting "subsection (5) of this section" for "paragraph (5) of this section." The Joint Committee ratified the correction at its July 22, 2010, meeting.

JUDICIAL DECISIONS

1. In general.

Plaintiffs, who had purchased vinyl siding from defendants as result of home solicitation sale, but who had not received notice from defendants of their right to cancel pursuant to Miss. Code § 75-66-3, had properly and timely exercised their right to cancel under § 75-66-5(4) when their attorney informed defendants by letter more than 2 years after contract was signed that plaintiffs desired to cancel. Cole v. Lovett, 672 F. Supp. 947 (S.D. Miss. 1987), aff'd, 833 F.2d 1008 (5th Cir. 1987).

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 198.

§ 75-66-5. When buyer's signature required on agreement or offer to purchase or attached statement; contents of documents; effect of seller's failure to comply with section.

(1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase or his signature to a statement executed simultaneously with and attached to the written agreement or offer to purchase, which written statement, offer to purchase or attached statement, designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights which shall comply with either subsection (2) or subsection (3) of this section.

(2) The statement must:

(a) appear under the conspicuous caption: "BUYER'S RIGHT TO CANCEL," and

(b) read as follows: "If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller by certified or registered mail. The notice must say that you do not want the goods or services and must be mailed before midnight on the third business day after you sign this agreement. The notice must be mailed to: ________ (insert name and mailing address of seller). If you cancel, the seller may keep all or part of your cash down payment, but in no event may the seller retain an amount in excess of five percent (5%) of the cash price or the amount of the cash down payment whichever is the lesser."

(3) A home solicitation sales contract which contains the notice of cancellation in the form and content required by rule or regulation of the Federal Trade Commission shall comply with the requirements of this section if it contains information to the consumer concerning his right to cancel at least equal to that required by subsection (2).

(4) Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

SOURCES: Laws, 1974, ch. 532, § 3, eff from and after July 1, 1974.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation made stylistic corrections in the last sentence of (1) and at the end of (3) by substituting "subsection (2) or subsection (3)" for "paragraph 2 or paragraph 3" and "subsection (2)" for "subparagraph (2)," respectively. The Joint Committee ratified the correction at its July 22, 2010, meeting.

JUDICIAL DECISIONS

1. In general.

Plaintiffs, who had purchased vinyl siding from defendants as result of home solicitation sale, but who had not received notice from defendants of their right to cancel pursuant to Miss. Code § 75-66-3, had properly and timely exercised their right to cancel under § 75-66-5(4) when their attorney informed defendants by letter more than 2 years after contract was signed that plaintiffs desired to cancel. Cole v. Lovett, 672 F. Supp. 947 (S.D. Miss. 1987), aff'd, 833 F.2d 1008 (5th Cir. 1987).

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 197.

§ 75-66-7. Tender to buyer on cancellation or revocation; retention of cancellation fee; rights of buyer on seller's failure to act.

(1) Except as provided in this chapter, within ten (10) days after a home solicitation sale has been cancelled or an offer to purchase revoked, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) The seller may retain as a cancellation fee five percent (5%) of the cash price but not exceeding the amount of the cash down payment. If the seller fails to comply with an obligation imposed by this section, or if the buyer avoids the sale on any ground independent of his right to cancel provided by the provisions on the buyer's right to cancel as provided by Section 75-66-3 (1) of this chapter or revokes his offer to purchase, the seller is not entitled to retain a cancellation fee.

(4) Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

SOURCES: Laws, 1974, ch. 532, § 4, eff from and after July 1, 1974.

JUDICIAL DECISIONS

1. In general.

Defendants, who failed to comply with requirements of Miss. Code § 75-66-7(1) in connection with sale of vinyl siding to plaintiffs where plaintiffs had canceled contract pursuant to §§ 75-66-1 et seq., were not entitled to cancellation fee provided by § 75-66-7(3). Cole v. Lovett, 672 F. Supp. 947 (S.D. Miss. 1987), aff'd, 833 F.2d 1008 (5th Cir. 1987).

Where home solicitation sale includes sale of services as well as sale of goods, seller who has performed services prior to cancellation of sale is not entitled to any compensation except for 5% cancellation fee provided by Miss Code § 75-66-7(3). Cole v. Lovett, 672 F. Supp. 947 (S.D. Miss. 1987), aff'd, 833 F.2d 1008 (5th Cir. 1987).

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection §§ 201, 202.

§ 75-66-9. Tender to seller on cancellation or revocation; place; demand; time; buyer's duty with respect to goods; compensation for services performed.

(1) Except as provided in Section 75-66-7, within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale, but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, forty (40) days is presumed to be a reasonable time.

(2) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(3) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation except the cancellation fee provided in this chapter.

SOURCES: Laws, 1974, ch. 532, § 5, eff from and after July 1, 1974.

JUDICIAL DECISIONS

1. In general.

Where defendant failed to comply with requirements of Miss. Code §§ 75-66-1 et seq. in connection with sale of vinyl siding to plaintiff in home solicitation sale, plaintiffs were entitled to cancel contract, to cancel deed of trust, and to return all payments made under deed of trust; because defendants failed to demand possession of siding within reasonable time after cancellation pursuant to § 75-66-9, siding became property of plaintiffs with no further obligation to pay for it. Cole v. Lovett, 672 F. Supp. 947 (S.D. Miss. 1987), aff'd, 833 F.2d 1008 (5th Cir. 1987).

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Consumer and Borrower Protection § 203.

§ 75-66-11. Chapter inapplicable to insurance sales or solicitations.

Nothing in this chapter shall be construed as to apply to the sale or solicitation of insurance.

SOURCES: Laws, 1974, ch. 532, § 6, eff from and after July 1, 1974.

CHAPTER 67

Loans

Article 1. General Provision 75-67-1
Article 3. Small Loan Regulatory Law 75-67-101
Article 4. Mississippi Consumer Alternative Installment Loan Act 75-67-175
Article 5. Small Loan Privilege Tax Law 75-67-201
Article 7. Mississippi Pawnshop Act 75-67-301
Article 9. Title Pledge Act 75-67-401
Article 11. Mississippi Check Cashers Act 75-67-501
Article 13. Mississippi Credit Availability Act 75-67-601

ARTICLE 1.

GENERAL PROVISION.

SEC.
75-67-1. Pawnbrokers; application of article to.
75-67-3 through 75-67-37. Repealed.
75-67-39. Interest charges with respect to monthly or weekly installment loans.
75-67-41. Loan paid before maturity; how.

§ 75-67-1. Pawnbrokers; application of article to.

The provisions of Sections 75-67-39 and 75-67-41 shall be inapplicable to pawnbrokers as defined and regulated in Sections 75-67-301 through 75-67-343.

SOURCES: Codes, 1942, § 5570.5; Laws, 1958, ch. 169, § 1; Laws, 1993, ch. 598, § 23, eff from and after July 1, 1993.

Editor's Note — A transaction subject to Chapter 9 of this title may also be subject to the provisions of §§ 75-67-1 through 75-67-39. In the event of a conflict between Chapter 9 of this title and §§ 75-67-1 through 75-67-39, the provisions of the latter will control. See § 75-9-201(c).

Provisions similar to the provisions formerly found in §§ 75-67-3 through 75-67-37 can be found in Article 7, § 75-67-301 et seq.

Cross References — Local privilege tax on pawnbrokers, see § 27-17-299.

Finance companies, see § 27-21-1 et seq.

Motor vehicle sales finance, see § 63-19-1 et seq.

Applicability of this statute to secured transactions under Uniform Commercial Code, see §§ 75-9-201, 75-9-203.

Small loan regulatory law, see § 75-67-101 et seq.

ATTORNEY GENERAL OPINIONS

County may not require pawnbroker to keep more extensive records than those provided for by statute. Austin, May 16, 1991, A.G. Op. #91-0326.

County may not require pawnbroker to make records available to sheriff at any time other than that provided for by statute. Austin, May 16, 1991, A.G. Op. #91-

0326.

RESEARCH REFERENCES

ALR. Recoverability of compensatory damages for mental anguish or emotional distress for breach of contract to lend money. 52 A.L.R.4th 826.

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

12B Am. Jur. Legal Forms 2d, Moneylenders and Pawnbrokers §§ 177:3-177:5 (pawn tickets).

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

2 Am. Jur. Pl & Pr Forms (Rev), Assumpsit, Forms 47, 48 (answers in action for money lent).

2 Am. Jur. Pl & Pr Forms (Rev), Assumpsit, Forms 31-46 (complaints for money lent).

Practice References. Commercial Finance Guide (Matthew Bender).

Commercial Loan Documentation Guide (Matthew Bender).

Consumer Credit Law Manual (Matthew Bender).

Kenneth M. Lapine, Consumer Credit: Laws, Transactions and Forms (Matthew Bender).

§§ 75-67-3 through 75-67-37. Repealed.

Repealed by Laws, 1993, ch. 598, § 24, eff from and after July 1, 1993.

§ 75-67-3. [Codes, 1906, § 3155; Hemingway's 1917, § 5512; 1930, § 1952; 1942, § 5571; Laws, 1932, ch. 265; Laws, 1958, ch. 169, § 2]

§ 75-67-5. [Codes, 1906, § 3156; Hemingway's 1917, § 5513; 1930, § 1953; 1942, § 5572; Laws, 1958, ch. 169, § 3]

§ 75-67-7. [Codes, 1906, § 3157; Hemingway's 1917, § 5514; 1930, § 1954; 1942, § 5573; Laws, 1958, ch. 169, § 4]

§ 75-67-9. [Codes, 1906, § 3158; Hemingway's 1917, § 5515; 1930, § 1955; 1942, § 5574]

§ 75-67-11. [Codes, 1906, § 3159; Hemingway's 1917, § 5516; 1930, § 1956; 1942, § 5575; Laws, 1991, ch. 309, § 1]

§ 75-67-13. [Codes, 1906, § 3160; Hemingway's 1917, § 5517; 1930, § 1957; 1942, § 5576]

§ 75-67-15. [Codes, 1906, § 3161; Hemingway's 1917, § 5518; 1930, § 1958; 1942, § 5577]

§ 75-67-17. [Codes, 1906, § 3162; Hemingway's 1917, § 5519; 1930, § 1959; 1942, § 5578]

§ 75-67-19. [Codes, 1906, § 3163; Hemingway's 1917, § 5520; 1930, § 1960; 1942, § 5579]

§ 75-67-21. [Codes, 1906, § 3164; Hemingway's 1917, § 5521; 1930, § 1961; 1942, § 5580]

§ 75-67-23. [Codes, 1906, § 3165; Hemingway's 1917, § 5522; 1930, § 1962; 1942, § 5581]

§ 75-67-25. [Codes, 1906, § 3166; Hemingway's 1917, § 5523; 1930, § 1963; 1942, § 5582; Laws, 1968, ch. 361, § 8]

§ 75-67-27. [Codes, 1906, § 3167; Hemingway's 1917, § 5524; 1930, § 1964; 1942, § 5583; Laws, 1958, ch. 169, § 5]

§ 75-67-29. [Codes, 1906, § 3168; Hemingway's 1917, § 5525; 1930, § 1965; 1942, § 5584]

§ 75-67-31. [Codes, § 3169; Hemingway's 1917, § 5526; 1930, § 1966; 1942, § 5585; Laws, 1958, ch. 169, § 6]

§ 75-67-33. [Codes, Hemingway's 1917, § 5528; 1930, § 1968; 1942, § 5587; Laws, 1914, ch. 112; Laws, 1958, ch. 169, § 7]

§ 75-67-35. [Codes, Hemingway's 1917, § 5529; 1930, § 1969; 1942, § 5588; Laws, 1914, ch. 112]

§ 75-67-37. [Codes, Hemingway's 1917, § 5530; 1930, § 1970; 1942, § 5589; Laws, 1914, ch. 112]

Editor's Note — Former § 75-67-3 was entitled: Loaning money on personal property; license required.

Former § 75-67-5 was entitled: Licensee to give bond.

Former § 75-67-7 was entitled: Sureties on bond subject to suit.

Former § 75-67-9 was entitled: Additional bond may be required, when.

Former § 75-67-11 was entitled: Books to be kept; information required on pawn ticket; records to be kept by pawnbrokers.

Former § 75-67-13 was entitled: Renewals and partial payments.

Former § 75-67-15 was entitled: Mayor, sheriff or grand jury may inspect books.

Former § 75-67-17 was entitled: Penalty.

Former § 75-67-19 was entitled: Fees for investigating security or title.

Former § 75-67-21 was entitled: Usury, how considered.

Former § 75-67-23 was entitled: What charges unlawful.

Former § 75-67-25 was entitled: License, by whom issued.

Former § 75-67-27 was entitled: Penalty for failure to obtain license.

Former § 75-67-29 was entitled: License, when void.

Former § 75-67-31 was entitled: Warrants against borrowers.

Former § 75-67-33 was entitled: Excess rate of charge presumed, unless negative affidavit filed with sheriff showing also list of borrowers.

Former § 75-67-35 was entitled: Loans contrary to provisions of this article made misdemeanors; penalty.

Former § 75-67-37 was entitled: One-half of fines collected to be used as prosecution fund.

§ 75-67-39. Interest charges with respect to monthly or weekly installment loans.

Any persons, natural or artificial, including domestic and foreign corporations, lending money in this state, to be paid back in monthly or weekly installments, may charge interest thereon at the rate of seven percent (7%) per annum or less, unless otherwise specifically authorized by law, for the entire period of the loan, and aggregate the principal and interest for the entire period of the loan, and divide the same into monthly or weekly installments, and may take security therefor by mortgage, deed of trust, or title, with waiver of exemption, upon and to real estate or personal property, or both.

SOURCES: Codes, Hemingway's 1917, § 5531; 1930, § 1971; 1942, § 5590; Laws, 1916, ch. 136; Laws, 1958, ch. 169, § 8; Laws, 1980, ch. 492, § 5; Laws, 1982,

ch. 468, § 5; Laws, 1984, ch. 501, § 5; Laws, 1986, ch. 510, § 12, eff from and after July 1, 1986.

Editor's Note — Laws of 1980, ch. 492, §§ 6 and 7, provide as follows:

"SECTION 6. The provisions of this act shall apply only to contracts, agreements, or evidences of indebtedness entered into on or after the effective date of this act, and shall not defeat, extinguish or render void any claim or defense existing with respect to contracts, agreements or evidences of indebtedness entered into prior to the effective date of this act.

"SECTION 7. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of section 501(a)(1), 511 and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections shall remain in full force and effect in the State of Mississippi."

Laws of 1982, ch. 468, § 6, provides as follows:

"SECTION 6. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511 and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections shall remain in full force and effect in the State of Mississippi."

Laws of 1984, ch. 501, § 6, provides as follows:

"SECTION 6. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Laws of 1986, ch. 510, § 17, effective July 1, 1986, provides as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Cross References — Inapplicability of this section to pawnbrokers, see § 75-67-1.

Reinstatement of accelerated debt by payment of default before sale, see § 89-1-59.

Federal Aspects — Provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, see 12 USCS §§ 1735f-7 note, 86a, 1831d, and 1785, respectively.

JUDICIAL DECISIONS

1. In general.

Where a finance company charges interest on the money loaned at the rate of 5 per cent per annum for the entire period of the loan and then aggregates the principal and interest and divides the total into monthly instalments, even though the interest yield which the finance company receives for the use of its money is in most instances more than 6 per cent, the loans did not have the rate of interest exceeding 6 per cent and those notes held by the company on such loans were not subject to ad valorem taxes. Bailey v. North Am. Fin. Co., 212 Miss. 97, 54 So. 2d 227 (1951).

Usurious commission charged by broker did not affect title to notes and trust deed which had already been perfected in lender. Guaranty Inv. & Loan Co. v. Stevens, 161 Miss. 473, 137 So. 335 (1931).

Where one negotiating loan charged usurious commission, purchaser of notes and trust deed and its assignee are holders in due course. Guaranty Inv. & Loan Co. v. Stevens, 161 Miss. 473, 137 So. 335 (1931).

This section does not repeal the law authorizing building and loan associations. Tiley v. Grenada Bldg. & Loan Ass'n, 143 Miss. 381, 109 So. 10 (1926).

RESEARCH REFERENCES

ALR. Preemption Issues Under Depository Institutions Deregulation and Monetary Control Act. 28 A.L.R. Fed. 2d 467.

§ 75-67-41. Loan paid before maturity; how.

In any such loan contract as authorized in Section 75-67-39, provision may be made requiring the borrower, upon exercising any option to repay the loan before maturity, or upon any default in the payment of the monthly instalments of principal and interest, or upon the breach of any covenant entitling the lender to declare the whole indebtedness due and payable and to a foreclosure of the security, to repay the loan upon the following basis of settlement: The principal debt, with interest thereon at the rate of ten percent (10%) per annum, and allowing credit for all payments of instalments of principal and interest upon loan, with interest thereon at the rate of ten percent (10%) per annum from date of payment to said lender, computed annually in accordance with the laws of the State of Mississippi.

Any such loan contract, and all provisions thereof, shall be valid for the amount of the principal and interest charged, and such contracts shall not be held usurious.

SOURCES: Codes, Hemingway's 1917, §§ 5532, 5533; 1930, § 1972; 1942, § 5591; Laws, 1916, ch. 136.

Cross References — Reinstatement of accelerated debt by payment of default before sale, see § 89-1-59.

RESEARCH REFERENCES

ALR. Usury as affected by repayment, or borrower's option to repay, loan before maturity. 75 A.L.R.2d 1265.

ARTICLE 3.

SMALL LOAN REGULATORY LAW.

SEC.

75-67-101. Purpose of article.
75-67-103. Definitions.
75-67-105. License required.
75-67-107. Responsibility for administering provisions of Article 3.
75-67-109. Misleading advertising.
75-67-111. Licensees to keep records; requirements as to.

75-67-113. Access to records, etc.
75-67-115. Expenses of examinations; paid by licensee.
75-67-117. Repealed.
75-67-119. Penalties for imposition of excessive finance charges.
75-67-120. Deferral of installment of loan made by small loan licensee; charge for deferral; rules and regulations.
75-67-121. Recording and attorney's fees; insurance premiums; licensee may offer borrower opportunity to purchase auto club membership under certain circumstances.
75-67-122. Authorization for small loan licensees to charge and collect bad check charge.
75-67-123. Certain charges excluded from maximum allowable finance charge.
75-67-125. Repealed.
75-67-127. Requirements for making and payment of loans; confession of judgment; incomplete instruments; penalty.
75-67-129. Rules and regulations.
75-67-131. Injunction for violation of article.
75-67-133. Prior obligations not impaired.
75-67-135. Exemptions.
75-67-137. Licensee; freedom from liability.
75-67-139. Municipal and county ordinances void if overly restrictive.

§ 75-67-101. Purpose of article.

This article is hereby declared to be a public necessity and is remedial in purpose and the same shall be liberally construed to effectuate the purposes thereof and shall be known as the "Small Loan Regulatory Law" of this state.

SOURCES: Codes, 1942, § 5591-01; Laws, 1958, ch. 170, § 1, eff from and after July 1, 1958.

Editor's Note — A transaction subject to Chapter 9 of this title may also be subject to the provisions of §§ 75-67-101 through 75-67-135. In the event of a conflict between said Chapter 9 and §§ 75-67-101 through 75-67-135, the provisions of the latter will control. See § 75-9-203(c).

Cross References — Privilege tax on finance companies, see §§ 27-21-1 et seq.

Motor vehicle sales finance, see §§ 63-19-1 et seq.

Applicability of this statute to secured transactions under Uniform Commercial Code, see §§ 75-9-201, 75-9-203.

Maximum finance charges which may be charged by licensees under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law, see § 75-17-21.

Provision that a licensee under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law may receive finance charges and late payment charges regardless of the purpose for which an extension of credit is made, see § 75-17-25.

Pawnbrokers, see §§ 75-67-1 et seq.

Small loan privilege tax, see §§ 75-67-201 et seq.

Expenditure of "Consumer Finance Fund" for administering and enforcing "Small Loan Regulatory Law," see § 75-67-239.

JUDICIAL DECISIONS

1. In general.

In an action alleging violations of both the Truth in Lending Act and the Mississippi State Small Loan Regulatory Law, the United States District Court did not abuse its discretion in refusing to assert pendent jurisdiction over the state law claims where, although the original complaint had stated three specific allegations of violations of the Mississippi statute, thus implying that these were the sole claims under that statute, the petitioners had articulated additional state law violations on the basis of the evidence adduced at trial only after the close of the evidence, thus denying the respondents a fair opportunity to defend against those claims, and where the case involved a substantial issue of state constitutional law which had not been addressed by the Mississippi Supreme Court. Jones v. Fitch, 665 F.2d 586 (5th Cir. 1982).

Since § 75-67-111 contains a statute of limitations governing suits under the Mississippi Small Loan Regulatory Law (§§ 75-67-101 et seq.) by "any person" it is clear that the legislature did not intend that only the state comptroller of banks would be able to sue and thus the statute contemplates enforcement not only by the state comptroller of banks but also by private citizens. Bailey v. Defenbaugh & Co., 513 F. Supp. 232 (N.D. Miss. 1981).

On appeal from the dismissal of a complaint to cancel a loan made under the Small Loan Regulatory Act, on the grounds that the lender had not permitted the borrower to decide whether insurance on the loan was to be written on a single or dual policy, in violation of an applicable regulation, the chancellor's decision in favor of the lender would be affirmed where it was not erroneous or against the weight of the evidence and where the chancellor had heard and considered the testimony and had concluded that the debtor had not made out a cause for relief. Tower Loan of Miss., Inc. v. Mills, 376 So. 2d 1347 (Miss. 1979).

The purpose of the Small Loan Regulatory Law was to remedy an unsavory condition and to regulate and control the small loan business. Consumers Credit Corp. v. Stanford, 194 So. 2d 868 (Miss. 1967).

Substantial compliance with the requirements of the Small Loan Regulatory Law is not sufficient to avoid the penalties for its violation. Consumers Credit Corp. v. Stanford, 194 So. 2d 868 (Miss. 1967).

The Small Loan Regulatory Law is not limited to any special person or group but is available to all who can qualify and secure the licenses to operate thereunder, and is therefore not a special but a general act and does not violate the constitution. Giles v. Friendly Fin. Co., 185 So. 2d 659 (Miss. 1966), appeal dismissed, cert. denied, 385 U.S. 21, 87 S. Ct. 228, 17 L. Ed. 2d 20 (1966).

Service charges earned by a loan broker operating under the Small Loan Regulatory Law constituted taxable income to him for federal income tax purposes, including any portion of the service charge retained by the lender as a guaranty that broker could fulfill his obligations to the lender. United States v. Britt, 335 F.2d 907 (5th Cir. 1964), cert. denied, 379 U.S. 971, 85 S. Ct. 669, 13 L. Ed. 2d 563 (1965).

There is no disposition on the part of the supreme court to praise the Small Loan Regulatory Law. Powell v. Sowell, 245 Miss. 53, 145 So. 2d 168 (1962), error overruled, 245 Miss. 64, 146 So. 2d 576 (1962).

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers §§ 1 et seq.

CJS. 47 C.J.S., Interest and Usury; Consumer Credit §§ 426 et seq.

Practice References. Commercial Finance Guide (Matthew Bender).

Commercial Loan Documentation Guide (Matthew Bender).

Consumer Credit Law Manual (Matthew Bender).

Kenneth M. Lapine, Consumer Credit: Laws, Transactions and Forms (Matthew Bender).

§ 75-67-103. Definitions.

The following words and phrases, when used in this article, shall, for the purposes of this article, have the meanings respectively ascribed to them in this section, except where the context clearly describes and indicates a different meaning:

(a) "Person" means and includes every natural person, firm, corporation, copartnership, joint-stock or other association or organization, and any other legal entity whatsoever.

(b) "Licensee" means and includes every person holding a valid license issued under the provisions of the Small Loan Privilege Tax Law (Section 75-67-201 et seq.) of this state, except those specifically exempt by the provisions of this article, who, in addition to any other rights and powers he or it might otherwise possess, shall engage in the business of lending money either directly or indirectly, to be paid back in monthly installments or other regular installments for periods of more or less than one (1) month, and whether or not the lender requires security from the borrower as indemnity for the repayment of the loan.

(c) "Occasional lender" means a person making not more than one (1) loan in any month or not more than twelve (12) loans in any twelve-month period.

(d) "Commissioner" means the Commissioner of Banking and Consumer Finance of the State of Mississippi.

(e) "Department" means the Department of Banking and Consumer Finance of the State of Mississippi.

(f) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

SOURCES: Codes, 1942, § 5591-02; Laws, 1958, ch. 170, § 2; Laws, 1996, ch. 423, § 1; Laws, 1997, ch. 332, § 3; Laws, 2000, ch. 621, § 13, eff from and after passage (approved May 23, 2000.)

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Definitions under the Small Loan Privilege Tax Law, see § 75-67-203.

All files on licensees, as defined in this section, who have ceased business under Small Loan Regulatory Law and Small Loan Privilege Tax Law to be maintained in accordance with retention periods established by State Records Committee, see § 75-67-231.

JUDICIAL DECISIONS

1. In general.

In view of the expressed intent of the Legislature that this act shall be "liberally construed to effect the purpose of the law," the phrase "without the exercise of due care" has been construed to mean that the licensee is not excused from performing the acts required by the Small Loan Regulatory Law by printing in the note form an acknowledgment of the makers that they have received the written statement required by Code 1942, § 5591-14, for otherwise the lender could avoid performing the statutory requirement by simply writing in the note an acknowledgment that the acts required of it had been performed. Consumers Credit Corp. v. Stanford, 194 So. 2d 868 (Miss. 1967).

Service charges earned by a loan broker are taxable in full under federal income tax statutes in year in which they were earned although a portion of the service charge was retained by the lender as a guaranty that broker would fulfill his obligations. United States v. Britt, 335 F.2d 907 (5th Cir. 1964), cert. denied, 379 U.S. 971, 85 S. Ct. 669, 13 L. Ed. 2d 563 (1965).

Loan broker's service charges are not "interest," so as to render loan usurious. Hooper v. Aetna Fin. Co., 244 Miss. 799, 145 So. 2d 907 (1962).

§ 75-67-105. License required.

(1) No person shall engage in the business of lending money except as authorized by this article, and without being the holder of a valid and subsisting license to engage in such business as provided by the Small Loan Privilege Tax Law (Section 75-67-201 et seq.).

(2) Every person engaged in the business of lending money as authorized by this article shall have a physical office located in the State of Mississippi. A separate license is required for each office doing business in the State of Mississippi. Each electronic loan processing machine owned or operated by a licensed office is required to possess a separate license and have a permanent address with loan records to be maintained in a designated licensed office in the state.

SOURCES: Codes, 1942, § 5591-03; Laws, 1958, ch. 179, § 3; Laws, 1996, ch. 423, § 2; Laws, 1997, ch. 332, § 4, eff from and after passage (approved March 17, 1997).

Cross References — License requirement under the Small Loan Privilege Tax Law, see § 75-67-205.

All files on licensees, who have ceased business under Small Loan Regulatory Law and Small Loan Privilege Tax Law to be maintained in accordance with retention periods established by State Records Committee, see § 75-67-231.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]
6. In general.

I. Under Current Law.

1.-5. [Reserved for future use.]

6. In general.

The tax levied by this section [Code 1942, § 9696-134] may not be required of a finance company which has paid the tax levied by Code 1942, § 9341, where it is not shown to have engaged in the business of an industrial loan company, industrial bank, or Morgan Plan Company. Winter v. Murdock Acceptance Corp., 246 Miss. 698, 149 So. 2d 516 (1963), suggestion of error sustained in part, overruled in part, 246 Miss. 698, 153 So. 2d 292 (1963).

The financial institutions mentioned in this section [Code 1942, § 9696-134] are those which invest funds chiefly in personal loans made by them to consumers, and which obtain or are authorized to obtain their funds from individual savers, either through the acceptance of deposits or the sale of investment certificates. Winter v. Murdock Acceptance Corp., 246 Miss. 698, 149 So. 2d 516 (1963), suggestion of error sustained in part, overruled in part, 246 Miss. 698, 153 So. 2d 292 (1963).

Liability of a finance company, also carrying on an industrial loan business, to the municipal tax imposed on such business is not affected by its payment of the state tax imposed on finance companies. Winter v. Murdock Acceptance Corp., 246 Miss. 698, 149 So. 2d 516 (1963), suggestion of error sustained in part, overruled in part, 246 Miss. 698, 153 So. 2d 292 (1963).

The tax imposed is highly penal. Winter v. Murdock Acceptance Corp., 246 Miss. 698, 149 So. 2d 516 (1963), suggestion of error sustained in part, overruled in part, 246 Miss. 698, 153 So. 2d 292 (1963).

Evidence held not to warrant a finding that one was not a moneylender within the purview of this section [Code 1942, § 9696-134]. Winter v. Nash, 245 Miss. 246, 147 So. 2d 507 (1962).

The state tax collector may sue one engaging in the money-lending business without obtaining a privilege license, for the privilege tax, without first assessing the tax and proceeding under Code 1942, § 9696-208. Winter v. Nash, 245 Miss. 246, 147 So. 2d 507 (1962).

RESEARCH REFERENCES

ALR. Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting validity or enforceability of contract. 29 A.L.R.4th 884.

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers §§ 6, 39.

CJS. 47 C.J.S., Interest and Usury; Consumer Credit §§ 324, 444-446.

§ 75-67-107. Responsibility for administering provisions of Article 3.

The provisions of this article shall be enforced and administered by the state comptroller of banks and his duly authorized agents, representatives and employees.

SOURCES: Codes, 1942, § 5591-04; Laws, 1958, ch. 170, § 4, eff from and after July 1, 1958.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Expenditure of "Consumer Finance Fund" for administering and enforcing "Small Loan Regulatory Law," see § 75-67-239.

JUDICIAL DECISIONS

1. In general.

Since § 75-67-111 contains a statute of limitations governing suits under the Mississippi Small Loan Regulatory Law (§§ 75-67-101 et seq.) by "any person" it is clear that the legislature did not intend that only the state comptroller of banks would be able to sue and thus the statute contemplates enforcement not only by the state comptroller of banks but also by private citizens. Bailey v. Defenbaugh & Co., 513 F. Supp. 232 (N.D. Miss. 1981).

§ 75-67-109. Misleading advertising.

It shall be a violation of this article for any licensee to advertise, print, display, publish, broadcast or permit to be advertised, printed, displayed, published or broadcast, in any manner whatsoever, any statement or representation with regard to rates, terms or conditions of lending money or for arranging, negotiating, procuring, or guaranteeing any loan or loans for any person which is false, misleading or deceptive. It shall also be a violation of this article for any licensee to offer or give to any borrower or prospective borrower any premium of any sort, whether by cash, check or goods or merchandise as an inducement to the making, brokering or renegotiation of any loan if (a) such premium amount is charged, directly or indirectly, to the borrower or prospective borrower; or (b) such inducement is undertaken without prior notification in such form as recommended by the commissioner.

SOURCES: Codes, 1942, § 5591-05; Laws, 1958, ch. 170, § 5; Laws, 2016, ch. 357, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment added "if (a) such premium ...recommended by the commissioner" at the end of the section.

§ 75-67-111. Licensees to keep records; requirements as to.

Each licensee shall keep and use in his business such books, accounts and other records which shall be in accordance with sound and accepted business practices and shall be in such form as will clearly reflect all loan transactions for every borrower and will enable the commissioner to determine whether the licensee is complying with the provisions of this article, or the Small Loan Privilege Tax Law (Section 75-67-201 et seq.). Such records shall be kept with respect to each loan transaction for a period of at least twenty-four (24) months after the final transaction on such loan. The records shall be kept in accordance with instructions of the commissioner and, in addition to any information which may be required by the commissioner, such records shall be so maintained as to clearly reflect, over the signature of the borrower, the following:

(a) Cash received by the borrower;
(b) Charges for interest;
(c) Charges for recording fees and insurance, if any;
(d) Total amount of note;

(e) Period of time for which loan is extended; and

(f) Federal annual percentage rate and the state contract rate.

All such records shall be open to the inspection of the commissioner or his duly authorized representatives at all times during regular business hours. Any suit brought against a licensee by any person on account of the violation or alleged violation of any of the provisions of this article with reference to any loan transaction shall be brought within twenty-four (24) months after the final maturity date of the loan, and not thereafter.

SOURCES: Codes, 1942, § 5591-06; Laws, 1958, ch. 170, § 6; Laws, 1996, ch. 423, § 3, eff from and after July 1, 1996.

JUDICIAL DECISIONS

1. In general.

A plaintiff was permitted to pursue a private right of action for an alleged violation of the Small Loan Regulatory Act, since § 75-67-111 contemplates such an action. Tew v. Dixieland Fin., Inc., 527 So. 2d 665 (Miss. 1988), but see Tower Loan v. Commissioner, 1996 Tax Ct. Memo LEXIS 162 (1996).

Since § 75-67-111 contains a statute of limitations governing suits under the Mississippi Small Loan Regulatory Law (§§ 75-67-101 et seq.) by "any person" it is clear that the legislature did not intend that only the state comptroller of banks would be able to sue and thus the statute contemplates enforcement not only by the state comptroller of banks but also by private citizens. Bailey v. Defenbaugh & Co., 513 F. Supp. 232 (N.D. Miss. 1981).

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers §§ 26 et seq., 41 et seq.

§ 75-67-113. Access to records, etc.

The comptroller or his duly authorized representatives shall have free access to the records, offices, places of business, safes and vaults of all licensees for the purpose of determining whether such licensee is complying with the provisions of this article and any regulations made hereunder. The comptroller shall have the authority to require the attendance of any and all persons and to examine such persons under oath relative to any loan transactions which are the subject matter of any examination, investigation or hearing held under any of the provisions of this article.

SOURCES: Codes, 1942, § 5591-07; Laws, 1958, ch. 170, § 7, eff from and after July 1, 1958.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

§ 75-67-115. Expenses of examinations; paid by licensee.

The commissioner may charge the licensee an examination fee in an amount not less than Three Hundred Dollars ($300.00) nor more than Six Hundred Dollars ($600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

All expense fees paid to the commissioner shall be deposited by the commissioner in the State Treasury in a special and separate fund to be known as the "Consumer Finance Fund."

SOURCES: Codes, 1942, § 5591-08; Laws, 1958, ch. 170, § 8; Laws, 1975, ch. 439; Laws, 1985, ch. 345, § 2; Laws, 2000, ch. 621, § 14; Laws, 2004, ch. 449, § 1, eff from and after passage (approved Apr. 28, 2004.)

Cross References — Consumer Finance Fund, see § 63-19-27.

Expenditure of "Consumer Finance Fund" for administering and enforcing "Small Loan Regulatory Law," see § 75-67-239.

§ 75-67-117. Repealed.

Repealed by Laws, 1974, ch. 564, § 8, eff from and after July 1, 1974. [Codes, 1942, § 5591-09; Laws, 1958, ch. 170, § 9]

Editor's Note — Former § 75-67-117 specified permissible service charges, interest and maximum periods of time for loans. Provisions governing finance charges and interest may now be found in Chapter 17 of Title 75.

§ 75-67-119. Penalties for imposition of excessive finance charges.

If any finance charge in excess of that expressly permitted by Section 75-17-21 or 75-67-181 is contracted for or received, all finance charges and other charges shall be forfeited and may be recovered, whether the contract be executed or executory. If any finance charge is contracted for or received that exceeds the maximum finance charge authorized by law by more than one hundred percent (100%), the principal and all finance charges and other charges shall be forfeited and any amount paid may be recovered by suit; and, in addition, the licensee and the several members, officers, directors, agents, and employees thereof who shall have participated in such violation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) and not less than One Hundred Dollars ($100.00), in the discretion of the court; and, further, the Commissioner of Banking and Consumer Finance shall forthwith cite such licensee to show cause why its license should not be revoked and proceedings thereon shall be as is specifically provided in the Small Loan Privilege Tax Law (Section 75-67-201 et seq.).

SOURCES: Codes, 1942, § 5591-10; Laws, 1958, ch. 170, § 10; Laws, 1984, ch. 476, § 1; Laws, 1986, ch. 510, § 15; Laws, 2016, ch. 301, § 10, eff from and after July 1, 2016.

Editor's Note — Laws of 1984, ch. 476, § 2, as amended by Section 16, Chapter 510, Laws of 1986, provides as follows:

"SECTION 2. The provisions of this act shall apply only to contracts, agreements or evidences of indebtedness entered into on or after May 11, 1984, and shall not defeat, extinguish or render void any claim or defense existing with respect to contracts, agreements or evidences of indebtedness entered into prior to May 11, 1984."

Laws of 1986, ch. 510, § 17, effective July 1, 1986, provide as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

Amendment Notes — The 2016 amendment inserted "or 75-67-181" in the first sentence.

Cross References — Maximum finance charges which may be charged by licensees under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law, see § 75-17-21.

Provision that a licensee under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law may receive finance charges and late payment charges regardless of the purpose for which an extension of credit is made, see § 75-17-25.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Federal Aspects — Provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, see 12 USCS §§ 1735f-7 note, 86a, 1831d, 1730g, and 1785, respectively.

JUDICIAL DECISIONS

1. In general.

Section § 75-67-119 has not been repealed by implication by the repeal of § 75-67-117. Bailey v. Defenbaugh & Co., 513 F. Supp. 232 (N.D. Miss. 1981).

The remedy for charging borrowers more than the actual cost of insurance premiums under §§ 75-67-119 and 75-67-121 is the invalidation of the loan contract and the refunding to the borrower of all payments of any nature made under its terms. Bailey v. Defenbaugh & Co., 513 F. Supp. 232 (N.D. Miss. 1981).

Forfeiture of interest and finance charges under § 75-17-1 was improper where the excessive charges were the result of an honest mistake and therefore exempt from forfeiture within the meaning of § 75-67-119. United Cos. Mtg. & Inv. of S.W. Miss., Inc. v. Lester, 394 So. 2d 1350 (Miss. 1981).

Interest and service charges collectible on a loan repaid before maturity out of credit life insurance which the borrower was required to procure are based on the number of months which the loan had run before such repayment. Jackson Inv. Co. v. Wingo, 248 Miss. 388, 159 So. 2d 175 (1964).

That a borrower was charged seventeen cents in excess of the permissible amount does not invalidate the contract of loan.

Powell v. Sowell, 245 Miss. 53, 145 So. 2d 168 (1962), error overruled, 245 Miss. 64, 146 So. 2d 576 (1962).

A provision in a note for an attorney's fee if placed in an attorney's hands for collection, does not violate the Small Loan Regulatory Law of 1958. Powell v. Sowell, 245 Miss. 53, 145 So. 2d 168 (1962), error overruled, 245 Miss. 64, 146 So. 2d 576 (1962).

RESEARCH REFERENCES

ALR. Preemption Issues Under Depository Institutions Deregulation and Monetary Control Act. 28 A.L.R. Fed. 2d 467.

Am Jur. 44B Am. Jur. 2d, Interest and Usury § 275 et seq.

53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 46 et seq.

CJS. 47 C.J.S., Interest & Usury; Consumer Credit § 466.

§ 75-67-120. Deferral of installment of loan made by small loan licensee; charge for deferral; rules and regulations.

(1) With respect to any loan made or handled by a licensee hereunder, the licensee and the borrower may, at any time, agree to a deferral of all or part of one or more unpaid installments, and the licensee may make and collect a charge therefor, subject to the following provisions:

(a) A deferral postpones the scheduled due date of an installment or installments as originally scheduled, or as previously deferred, for the deferment period.

(b) The deferment period is that period of time for which the payment is or the payments are deferred.

(c) The deferral charge shall not exceed an amount equal to the result of applying the annual percentage rate, as defined by the federal Truth in Lending Act and Regulation Z, provided in the original agreement between the licensee and the borrower, to the amount deferred for the deferment period, calculated without regard to differences in the lengths of months, but proportionately for a part of a month, counting each day as one-thirtieth (1/30) of a month. A deferral charge is earned pro rata during the deferment period and is fully earned on the last day of the deferment period.

(d) If a loan is prepaid in full during a deferment period, then the licensee shall make or credit to the borrower a refund of the unearned deferral charge in addition to any other refund or credit made for prepayment in full.

(e) A deferral charge may be collected at the time it is assessed or at any time thereafter.

(f) Any payment received at the time of the deferment may be applied first to the deferral charge and the remainder, if any, to the unpaid balance of the loan, but if such payment is sufficient to pay, in addition to the appropriate delinquency charge, any installment which is in default, it shall be first so applied, and such installment shall not then be deferred or be subject to the deferral charge.

(g) No installment on which a delinquency charge has been collected shall be deferred or included in the computation of the deferral unless such delinquency charge is refunded to the borrower or credited to the deferral charge.

(h) In addition to the deferral charge, the licensee may make appropriate additional charges as provided in this chapter. The amount of such charges which are not paid in cash may be added to the amount deferred for the purpose of calculating the deferral.

(i) Any such deferral agreement shall be evidenced in writing, which shall include:

(i) The amount of the deferral charge;

(ii) The amount or amounts deferred;

(iii) The date to which, or the time period for which, payment is deferred; and

(iv) The nature and amount of any other charges made at the time.

(j) No deferral charge may be made for a period after the date that the licensee elects to accelerate the maturity of the loan.

(k) No more than two (2) deferrals on which the charge authorized in this section is made, may be made, or agreed to be made, in any twelve-month period.

(2) Whenever the Commissioner of Banking and Consumer Finance deems it necessary to do so, he shall have the authority to promulgate reasonable rules and regulations to prevent abuse of the provisions of this section.

SOURCES: Laws, 1989, ch. 362, § 1, eff from and after July 1, 1989.

Federal Aspects — Regulation 2 of the Truth in Lending Act is codified at 12 CFR Part 226.

The Truth in Lending Act is codified at 15 USCS § 1601 et seq.

§ 75-67-121. Recording and attorney's fees; insurance premiums; licensee may offer borrower opportunity to purchase auto club membership under certain circumstances.

(1) Any licensee under this article may charge any borrower on loans of One Hundred Dollars ($100.00) or more the actual cost of recording any instrument executed as security for a loan; any reasonable fee paid to an attorney for investigating the title to any property given as security for a loan; the actual cost of any premium paid for insurance upon any property given as security for a loan, such insurance to be placed with an insurance company agent of the borrower's selection so long as it is licensed to do business in the State of Mississippi; the actual cost of any premium paid for credit life, health and/or accident insurance and/or involuntary unemployment insurance on any borrower where the amount of insurance required is not in excess of the amount of the loan; and the premium for the insurance is in keeping with that usually and customarily paid for like insurance.

(2) In addition, after the licensee has fully approved the loan to the borrower, the licensee may offer the borrower the opportunity to purchase an

auto club membership. The licensee shall inform the borrower in writing that the purchase of an auto club membership is optional and is not required as a condition of receiving the loan, and that failure to purchase an auto club membership will not affect the licensee's approval of the loan or the receipt of the loan by the borrower. The notification shall be initialed by the borrower. If the borrower chooses to purchase an auto club membership, the licensee shall allow the borrower to pay the cost of the auto club membership using funds other than the proceeds of a loan or have the cost deducted from the proceeds of any loan obtained from the licensee. The borrower shall be allowed to cancel the auto club membership for a full refund of the purchase price at any time within thirty (30) days after the date of purchase from the licensee if the borrower has not used any of the services provided through the auto club membership. The commissioner shall monitor the number of loans made by licensees with which the borrower chooses to purchase an auto club membership, and shall report that information to the Chairmen of the House Banking and Financial Services Committee and the Senate Business and Financial Institutions Committee by January 1, 2009.

(3) On loans of One Hundred Dollars ($100.00) or more, any licensee under this article may solicit and collect from any purchasing borrower the actual cost of any insurance premium paid for any one or more noncredit insurance policies, provided that such insurance is optional, is filed with the Department of Insurance, and is underwritten by an insurance company qualified to do business in Mississippi, and provided that the following conditions are met:

(a) The licensee shall not require the purchase of the noncredit insurance as a condition of receiving any loan or other extension of credit from the licensee;

(b) The licensee's employees offering the noncredit insurance are:

(i) Properly licensed with the Department of Insurance as an insurance producer for the type of insurance being offered to the borrower by that employee; and

(ii) Appointed with the insurance company providing the insurance policy to the purchasing borrower;

(c) The licensee shall not make the borrower's ability to obtain any current or future loan or other extension of credit from the licensee contingent upon the borrower's agreement to purchase the noncredit insurance or otherwise transact business with the licensee; and

(d) The licensee shall allow the borrower the option to pay the cost of the noncredit insurance policy using funds other than the proceeds of a loan obtained from the licensee, or to have the cost of the noncredit insurance paid from the proceeds of any loan obtained from the licensee.

The limitations on the amount of insurance contained in subsection (1) of this section shall not apply to insurance sold under this subsection (3).

(4) Whenever he finds it necessary, the Commissioner of Banking and Consumer Finance shall have the power to adopt and enforce reasonable rules and regulations to prevent the abuse of this section and the making of excessive charges under this section.

SOURCES: Codes, 1942, § 5591-11; Laws, 1958, ch. 170, § 11; Laws, 2005, ch. 438, § 2; Laws, 2006, ch. 509, § 1; Laws, 2008, ch. 369, § 1; Laws, 2010, ch. 522, § 1; Laws, 2015, ch. 407, § 1; Laws, 2015, ch. 411, § 1; Laws, 2016, ch. 481, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 1 of ch. 407, Laws of 2015, effective from and after July 1, 2015 (approved at 2:15 p.m. on March 23, 2015), amended this section. Section 1 of ch. 411, Laws of 2015, effective from and after July 1, 2015 (approved at 2:23 p.m. on March 23, 2015), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 411, Laws of 2015, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date supersedes all other amendments to the same section approved on an earlier date.

Amendment Notes — The first 2015 amendment (ch. 407), substituted "July 1, 2018" for "July 1, 2015" at the end of the second paragraph and made a minor stylistic change.

The second 2015 amendment (ch. 411), deleted the former last sentence of the second paragraph which read: "This paragraph shall stand repealed on July 1, 2015" and made a minor stylistic change.

The 2016 amendment designated the former first, second and last paragraphs as (1), (2) and (4), respectively; added (3); and in (1), inserted "credit" and "and/or involuntary unemployment insurance."

JUDICIAL DECISIONS

1. In general.

The Mississippi legislature must have meant by "actual cost" the cost of the licensee, otherwise it would have used a different phrase such as "actual cost including a reasonable commission"; since the legislature has already permitted lenders to make a handsome profit by allowing them to charge borrowers interest of up to 36 percent per annum further compensation in the form of commissions for insurance sales seems unwarranted, especially because the purpose of credit life, disability, and property insurance is to protect the lender, not the borrower, by insuring that a loan will be repayed despite destruction of collateral or impairment of the borrower's earning ability. Bailey v. Defenbaugh & Co., 513 F. Supp. 232 (N.D. Miss. 1981).

The remedy for charging borrowers more than the actual cost of insurance premiums under §§ 75-67-119 and 75-67-121 is the invalidation of the loan contract and the refunding to the borrower of all payments of any nature made under its terms. Bailey v. Defenbaugh & Co., 513 F. Supp. 232 (N.D. Miss. 1981).

Where an insurance company charges consumers for $1000 of property insurance on a wrecked car worth only $25, the consumer's signature on the insurance application does not constitute a representation that the car is worth the $1000 liability limit noted on the face of the application. Bailey v. Defenbaugh & Co., 513 F. Supp. 232 (N.D. Miss. 1981).

Under § 75-67-121, which permits a licensee to charge a borrower the "actual cost of any premium" paid for insurance where the premium is in keeping with that usually and customarily paid for like insurance, a licensee may legally charge premiums up to the statutorily regulated maximum regardless of the commissions the licensee receives from the insurance company. The statute allows a licensee to collect the total cost of the premiums, not just the cost of the premiums less any commission the licensee receives. Tew v. Dixieland Fin., Inc., 527 So. 2d 665 (Miss. 1988), but see Tower Loan v. Commissioner, 1996 Tax Ct. Memo LEXIS 162 (1996).

§ 75-67-122. Authorization for small loan licensees to charge and collect bad check charge.

Any licensee hereunder who receives a check, draft, negotiable order of withdrawal or like instrument drawn on a bank or other depository institution given by any person in full or partial repayment of a loan or other extension of credit may, if such instrument is not paid or is dishonored by such institution, charge and collect from the borrower or person to whom the credit was extended, a bad check charge in an amount not to exceed the sum of Fifteen Dollars ($15.00). This charge may be made only once with respect to the same instrument, and after the nonpayment or dishonor of the instrument, it shall be returned by the licensee to the borrower or person to whom credit was extended. This charge shall not be deemed to be interest, finance charge or other charge made as an incident to or as a condition to the grant of the loan or other extension of credit and shall not be included in determining the limit on charges which may be made in connection with the loan or extension of credit as provided in this chapter or in any other law of this state.

SOURCES: Laws, 1989, ch. 452, § 1; Laws, 1991, ch. 436 § 1, eff from and after passage (approved March 21, 1991).

§ 75-67-123. Certain charges excluded from maximum allowable finance charge.

Notwithstanding any other law to the contrary, for purposes of compliance with maximum charges permitted under Section 75-17-21 and Section 75-67-181, any charges, fees or premiums for voluntarily purchased credit insurance or auto club memberships shall not be included in the maximum finance charge allowed by state law.

SOURCES: Laws, 2016, ch. 301, § 7, eff from and after July 1, 2016.

Editor's Note — A former § 75-67-123 [Codes, 1942, § 5591-12; Laws, 1958, ch. 170, § 12; Repealed by Laws, 1997, ch. 332, § 9, eff from and after passage approved (March 17, 1997)] provided for restrictions on loans made by a licensee under the Small Loan Regulatory Law to the same borrower within ninety (90) days.

§ 75-67-125. Repealed.

Repealed by Laws, 1974, ch. 564, § 8, eff from and after July 1, 1974. [Codes, 1942, § 5591-13; Laws, 1958, ch. 170, § 13]

Editor's Note — Former § 75-67-125 prohibited licensees from engaging in both lending and brokering.

§ 75-67-127. Requirements for making and payment of loans; confession of judgment; incomplete instruments; penalty.

(1) Every licensee shall:

(a) At the time any loan is made, deliver to the borrower, or if there are two (2) or more borrowers to one (1) of them, a statement in the English language, disclosing (i) the date of the loan, (ii) the amount of the loan, (iii) the schedule of payments or a description thereof, (iv) the type of the security, which may be by mortgage or deed of trust upon real estate or personal property, or both, (v) the name and address of the licensed office and of each person primarily obligated on the note, and (vi) the total amount of finance charges expressed as a dollar amount and as an annual percentage rate.

(b) For each payment made on account of any such loan, give to the person making it at the time the payment is made a receipt specifying in plain, clear and simple terms the amount of the payment and the balance owing on the combined principal and finance charges after credit for each payment. When payment is made by check or money order, the licensee shall not be required to furnish a receipt. Compliance with the Federal Truth in Lending Act shall constitute compliance with this section.

(c) When loans made or handled by a licensee under the provisions of the Small Loan Privilege Tax Law are paid in full prior to maturity, after July 1, 1974, whether by cash, renewal or otherwise, refund to the borrower the finance charge exceeding one dollar ($1.00) calculated on the rule of the sum of the digits, commonly known as the "Rule of 78ths." The refund shall be based and calculated on the number of days by which the loan is paid in advance, less twenty (20) days.

(d) Upon repayment of the loan in full, release any mortgage or security agreement and restore any pledge unless such mortgage, security agreement or pledge continues to secure an obligation to the licensee, and cancel and return any note and any assignment given to the licensee for the loan which is repaid.

(2) No licensee shall:

(a) Take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor

(b) take any note, promise to pay, or instrument of security that does not disclose the amount of the loan before the addition of precomputed charges, a schedule of payments or a description thereof, the agreed rate of charge, nor any instrument in which blanks are left to be filled in after the loan is made.

(3) Any contract of loan in the making or collection of which any provision of this section shall have been violated, either knowingly or without the exercise of due care to prevent the same, shall be void and the licensee shall have no right to collect or receive any principal, charges or recompense whatsoever.

SOURCES: Codes, 1942, § 5591-14; Laws, 1958, ch. 170, § 14; Laws, 1974, ch. 564, § 4, eff from and after July 1, 1974.

Cross References — Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

Small Loan Privilege Tax Law, see §§ 75-67-201 through 75-67-247.

Federal Aspects — The Truth in Lending Act is codified at 15 USCS § 1601 et seq.

JUDICIAL DECISIONS

1. In general.

The record suggested that defendants, a lender and an affiliated insurer, had complied with the statutory and regulatory requisites in calculating refunds of unearned premiums for property insurance under the Rule of 78ths. Smith v. Tower Loan of Miss., Inc., 216 F.R.D. 338 (S.D. Miss. 2003), affirmed by 91 Fed. Appx. 952, 2004 U.S. App. LEXIS 4955 (5th Cir. Miss. 2004).

Mississippi's finance charge statute contains a tiered structure permitting higher annual percentage rates for smaller loans than larger loans. Smith v. Tower Loan of Miss., Inc., 216 F.R.D. 338 (S.D. Miss. 2003), affirmed by 91 Fed. Appx. 952, 2004 U.S. App. LEXIS 4955 (5th Cir. Miss. 2004).

Rule of 78th's method of computation in case of prepayment of loan by one licensed under Small Loan Privilege Tax Act, § 75-67-201 et seq., as authorized by provision of Small Loan Regulatory Act, § 75-67-127(1)(c), is not affected by general usury statute, § 75-17-31, where laws at issue originated in same enactment (Chapter 565, Laws, 1974) and are reasonably assumed to comprise rational and noncontradictory scheme, and where special and particular statutes control over general usury statute in event of conflicts between legislative provisions. Benoit v. United Cos. Mtg., Inc., 504 So. 2d 196 (Miss. 1987).

An action by a borrower against a finance company for recovery of damages based upon the Truth in Lending Act was not barred by a prior state action instituted by the finance company for collection on a note in which it was held that the finance company had violated § 75-67-127(2)(b); since the violations or wrongs sued for under the Truth in Lending Act were different than those addressed in the state action, they constituted two separate causes of action. White v. World Fin. of Meridian, Inc., 653 F.2d 147 (5th Cir. 1981).

Substantial compliance with the requirements of the Small Loan Regulatory Law is not sufficient to avoid the penalties for its violation. Consumers Credit Corp. v. Stanford, 194 So. 2d 868 (Miss. 1967).

The burden of proof is upon the borrowers to show that the lender-licensee did not furnish them with a statement showing the amount and date of the loan as provided in Code 1942, § 5591-09, or issue receipts to them for payments made on the loan as required by that section. Consumers Credit Corp. v. Stanford, 194 So. 2d 868 (Miss. 1967).

When borrowers had introduced proof showing noncompliance with the statutory requirements of this, the burden of going forward with the evidence was upon the lender-licensee to show "due care" by explaining the failure to comply with the statutory requirements, and this is especially true where a party has special knowledge of required evidence, or where such evidence is within the control of such party, as is true of the lender-licensee in the usual case. Consumers Credit Corp. v. Stanford, 194 So. 2d 868 (Miss. 1967).

RESEARCH REFERENCES

ALR. Requisites and sufficiency of statement by lender to borrower, at time of loan or receipt of payment, to comply with small loan statutes in that regard. 14 A.L.R.3d 330.

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 26 et seq.

§ 75-67-129. Rules and regulations.

The commissioner shall have the power and authority to adopt, promulgate and issue such rules and regulations, not inconsistent with the provisions of this article or some other statute, as he shall deem necessary for the purpose of the administration of this article. A copy of every rule and regulation promulgated by the commissioner shall be filed in accordance with the Administrative Procedures Law, Section 25-43-1 et seq.

SOURCES: Codes, 1942, § 5591-15; Laws, 1958, ch. 170, § 15; Laws, 1996, ch. 423, § 4, eff from and after July 1, 1996.

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq., refereed to in this section, shall be deemed to mean and refer to Section 25-43.1.101 et seq.

Cross References — Maximum finance charges which may be charged by licensees under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law, see § 75-17-21.

Provision that a licensee under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law may receive finance charges and late payment charges regardless of the purpose for which an extension of credit is made, see § 75-17-25.

Exemption from regulation as real estate broker, see § 75-35-3.

Expenditure of "Consumer Finance Fund" for administering and enforcing "Small Loan Regulatory Law," see § 75-67-239.

Enumeration of loan charges associated with loan procured by consumer loan broker, see § 81-19-21.

JUDICIAL DECISIONS

1. In general.

On appeal from the dismissal of a complaint to cancel a loan made under the Small Loan Regulatory Act, on the grounds that the lender had not permitted the borrower to decide whether insurance on the loan was to be written on a single or dual policy, in violation of an applicable regulation, the chancellor's decision in favor of the lender would be affirmed where it was not erroneous or against the weight of the evidence and where the chancellor had heard and considered the testimony and had concluded that the debtor had not made out a cause for relief. Tower Loan of Miss., Inc. v. Mills, 376 So. 2d 1347 (Miss. 1979).

§ 75-67-131. Injunction for violation of article.

Whenever the comptroller has reasonable cause to believe that any person is violating any of the provisions of this article, in addition to all other remedies provided hereby, the comptroller may, by, through and on the relation of the attorney general, district attorney or county attorney, apply to a court of competent jurisdiction for an injunction, both temporary and permanent, to restrain such person from engaging in or continuing such violation of the provisions of this article or from doing any act or acts in furtherance thereof.

SOURCES: Codes, 1942, § 5591-16; Laws, 1958, ch. 170, § 16, eff from and after July 1, 1958.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the commissioner of banking and consumer finance.

Cross References — Injunctions, generally, see § 11-13-1.

§ 75-67-133. Prior obligations not impaired.

Nothing herein contained shall be so construed so as to invalidate, impair or affect the obligation of any contract, agreement or loan between any lender or licensee and borrower which was lawfully entered into prior to July 1, 1958, or which shall be lawfully entered into prior to the expiration or cancellation of a license issued to the licensee under the provisions of the Small Loan Privilege Tax Law (Section 75-67-201 et seq.).

SOURCES: Codes, 1942, § 5591-17; Laws, 1958, ch. 170, § 17, eff from and after July 1, 1958.

§ 75-67-135. Exemptions.

This article shall not apply to any person, firm, partnership, corporation or association doing business under any of the laws of this state relating to banks, savings banks, trust companies, building and loan associations, insurance companies, pawnbrokers or credit unions; nor shall this article apply to any person, firm, partnership, corporation or association concerning loans made to the employees or farm tenants of such person, firm, partnership or corporation or association; nor to loans or advances made to be used in or in the furtherance of farming or agricultural operations; nor to loans insured or guaranteed by the United States or any of its agencies; nor to persons, firms, partnerships, associations or corporations making loans only secured by real estate; nor to dealers and sellers or purchasers of conditional sales or retained title contracts on real or personal property; nor an occasional lender not regularly engaged in the business of lending money, but such lender shall be governed by the usury statutes of this state.

SOURCES: Codes, 1942, § 5591-18; Laws, 1958, ch. 170, § 18; Laws, 1996, ch. 423, § 5, eff from and after July 1, 1996.

Cross References — Usury law generally, see § 75-17-1 et seq.

JUDICIAL DECISIONS

1. In general.

Exempt from the operation of the Small Loan Regulatory Law are those whose business is that of making particular types of loans under other laws of this state. Giles v. Friendly Fin. Co., 185 So. 2d 659 (Miss. 1966), appeal dismissed, cert. denied, 385 U.S. 21, 87 S. Ct. 228, 17 L. Ed. 2d 20 (1966).

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 15 et seq.

§ 75-67-137. Licensee; freedom from liability.

(1) A licensee under this article shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) A licensee under this article, acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.

SOURCES: Laws, 1997, ch. 332, § 12, eff from and after passage (approved March 17, 1997).

§ 75-67-139. Municipal and county ordinances void if overly restrictive.

Municipalities and counties in this state may enact ordinances that are in compliance with, but not more restrictive than, the provisions of this article. Any order, ordinance or regulation existing on April 28, 2004, of Sections 75-67-115, 75-67-215, 75-67-247 and this section, or any order, ordinance or regulation enacted after April 28, 2004, of Sections 75-67-115, 75-67-215, 75-67-247 and this section, that conflicts with any of the provisions of this article shall be void to the extent of the conflict.

SOURCES: Laws, 2004, ch. 449, § 3, eff from and after passage (approved Apr. 28, 2004.)

ARTICLE 4.

MISSISSIPPI CONSUMER ALTERNATIVE INSTALLMENT LOAN ACT.

SEC.
75-67-175. Short title.
75-67-177. License required; lender option to use rates under Section 75-17-21 or Section 75-67-181.
75-67-179. Definitions; computation of time for calculation of interest; loan payments; loans not to exceed percentage of consumer's income.
75-67-181. Finance charge in lieu of interest on certain loans.
75-67-183. Rules and regulations; injunction for violation of article.

75-67-185. Licensee; freedom from liability.

§ 75-67-175. Short title.

This article shall be known as the "Mississippi Consumer Alternative Installment Loan Act."

SOURCES: Laws, 2016, ch. 301, § 1, eff from and after July 1, 2016.

§ 75-67-177. License required; lender option to use rates under Section 75-17-21 or Section 75-67-181.

(1) No person, partnership, association, limited liability company or corporation shall engage in the business of making consumer installment loans of money as provided by this article and charge, contract for, or receive on any such loan interest, discount, or consideration therefor without demonstrating to the satisfaction of the Commissioner of Banking and Consumer Finance that they are the holder of a valid and subsisting license under the Small Loan Privilege Tax Law, Section 75-67-201 et seq.

(2) This article shall not apply to persons engaged in the business of extending credit to borrowers primarily for business or commercial purposes.

(3) For any consumer installment loan that a licensee makes, the licensee has the option to either lend at the rates and fees indicated under the Small Loan Regulatory Law (Section 75-17-21), or at the rates and charges under Section 75-67-181.

(4) The provisions of this article shall be administered and enforced by the Commissioner of Banking and Consumer Finance, or his duly authorized agents, representatives and employees.

SOURCES: Laws, 2016, ch. 301, § 2, eff from and after July 1, 2016.

§ 75-67-179. Definitions; computation of time for calculation of interest; loan payments; loans not to exceed percentage of consumer's income.

(1) For the purposes of this article and for loans made at the rates indicated in Section 75-67-181, the following terms shall have the meanings as defined in this subsection:

(a) "Applicable interest," for a precomputed loan contract, means the amount of interest attributable to each monthly installment period. It is computed as if each installment period were one (1) month and any interest charged for extending the first installment period. The applicable interest for any monthly installment period is that portion of the precomputed interest that bears the same ratio to the total precomputed interest as the balances scheduled to be outstanding during that month bear to the sum of all scheduled monthly outstanding balances in the original contract.

(b) "Commissioner" means the Commissioner of the Mississippi Department of Banking and Consumer Finance.

(c) "Department" means the Mississippi Department of Banking and Consumer Finance.

(d) "Licensee" means any individual, partnership, association or corporation making loans under this article and duly licensed under the provisions of the Small Loan Privilege Tax Law, Section 75-67-201 et seq.

(e) "Person" means a natural person, sole proprietorship, corporation, company, limited liability company, partnership, association or any other legal entity however organized.

(f) "Precomputed loan" means a loan in which the debt is expressed as the sum of the original principal amount plus interest computed actuarially in advance, assuming all payments will be made when scheduled.

(2) To compute time for loans made in accordance with the interest indicated under Section 75-67-181, for the calculation of interest and other purposes, a month shall be a calendar month and a day shall be considered one-thirtieth ($^1/_{30}$th) of a month when calculation is made for a fraction of a month. A month shall be one-twelfth ($^1/_{12}$th) of a year. A calendar month is that period from a given date in one (1) month to the same numbered date in the following month, and if there is no same numbered date, to the last day of the following month. When a period of time includes a month and a fraction of a month, the fraction of the month is considered to follow the whole month. In the alternative, the licensee may charge interest at the rate of one three-hundred sixty-fifth ($^1/_{365}$th) of the agreed annual rate for each day actually elapsed.

(3) With respect to loans made under the interest indicated in Section 75-67-181:

(a) Loans shall be repayable in substantially equal and consecutive monthly installments of principal and interest combined, except that the first installment period may be longer than one (1) month by not more than fifteen (15) days, and the first installment payment amount may be larger than the remaining payments by the amount of interest charged for the extra days.

(b) Payments may be applied to the combined total of principal and precomputed interest until the loan is fully paid.

(c) When any loan contract is paid in full by cash, renewal or refinancing, or a new loan, one (1) month or more before the final installment due date, a licensee shall refund or credit the obligor the applicable interest for all fully unexpired installment periods, as originally scheduled or as deferred, that follow the day of prepayment, and a month shall be earned if the prepayment occurs one (1) or more days after the payment due date. However, if the prepayment occurs before the first installment due date, the licensee shall refund or credit the obligor the applicable interest on a pro rata basis from the date of the loan to the date of prepayment. "Applicable interest" for any installment period means that portion of the precomputed monthly installment interest attributable to the installment period calculated based on a method at least as favorable to the consumer as the actuarial method, as defined by the federal Truth in Lending Act. If the maturity of the loan is accelerated for any reason and judgment is entered, the licensee shall credit the borrower with the same refund as if prepayment in full had been made on the date the lawsuit is filed.

(d) If two (2) or more installments are delinquent one (1) full month or more on any due date, and if the contract so provides, the licensee may reduce the unpaid balance by the refund credit that would be required for prepayment in full on the due date of the most recent maturing installment in default. Thereafter, and in lieu of any other default or deferment charges, the agreed rate of interest or interest at the rate of eighteen percent (18%) per annum may be charged on the unpaid balance until fully paid.

(e) Fifteen (15) days after the final installment as originally scheduled or deferred, the licensee may compute and charge interest on any balance remaining unpaid, including unpaid default or deferment charges, at a default rate of interest as agreed in the contract or at the rate of eighteen percent (18%) per annum, until fully paid.

(f) A late payment charge that complies with Section 75-17-27 shall not be considered a finance charge, if contracted for in writing.

(g) No licensee or other person may condition an extension of credit to a consumer borrower on the consumer's repayment by preauthorized electronic fund transfers or post-dated check. Consumers may choose any method of payment offered by the licensee, including, but not limited to, electronic fund transfers or debit card payments.

(h) The loan shall be fully amortizing and be repayable in its entirety in a minimum of nine (9) substantially equal and consecutive monthly payments with a period of not less than two hundred seventy-two (272) days to maturity.

(i) Each loan agreement entered into between a licensee and a consumer borrower shall include the following language: "This business is licensed and regulated by the Department of Banking and Consumer Finance. If you have any unresolved problem with a transaction at this location, you are entitled to assistance. Please call or write the Mississippi Department of Banking and Consumer Finance."

(j) A licensee is prohibited from making a loan to a consumer borrower if the payments to be made in any month on the loan exceed twenty-two and five-tenths percent (22.5%) of the consumer's gross monthly income, as demonstrated by documentation of the income, including, but not limited to, the consumer's most recent pay stub, receipt reflecting payment of government benefits, or other official documentation. "Official documentation" includes tax returns and documentation prepared by the source of the income. Notwithstanding anything contained in this section to the contrary, a licensee may rely upon the borrower's written statement or other written information provided by the borrower in those cases where the borrower is self-employed or employed in seasonal work.

(k) At the time a loan is made or within twenty (20) days after a loan is made, a licensee shall not (i) accept a check and agree to hold it for a period of days before deposit or presentment, or (ii) accept a check dated later than the date written.

SOURCES: Laws, 2016, ch. 301, § 3, eff from and after July 1, 2016.

§ 75-67-181. Finance charge in lieu of interest on certain loans.

In lieu of the interest and charges in Section 75-17-21, on loans of Four Thousand Dollars ($4,000.00) or less, a licensee may contract and charge a monthly finance charge not to exceed an annual percentage rate, calculated according to the actuarial method, of fifty-nine percent (59%) per annum on the unpaid balance of the amount financed.

SOURCES: Laws, 2016, ch. 301, § 4, eff from and after July 1, 2016.

§ 75-67-183. Rules and regulations; injunction for violation of article.

(1) The commissioner shall have the power and authority to adopt, promulgate and issue any rules and regulations, not inconsistent with law, necessary for the enforcement of this article. The commissioner may investigate any business conducted in the licensed office to determine whether any evasion or violation of this article has occurred.

(2) Licensees shall comply with, and all loans made under this article shall be in conformity with, all applicable provisions of the Small Loan Regulatory Law (Section 75-67-101 et seq.), and the Small Loan Privilege Tax Law (Section 75-67-201 et seq.), as determined by the commissioner.

(3) When the commissioner has reasonable cause to believe that a person is violating any provision of this article, or any regulation of the commissioner made under the authority of this article or any other applicable statute of this state, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this article, may enter an order requiring the person to stop and refrain from the violation. The commissioner may sue in any court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

SOURCES: Laws, 2016, ch. 301, § 5, eff from and after July 1, 2016.

§ 75-67-185. Licensee; freedom from liability.

(1) A licensee shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after the act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) A licensee, acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after that act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.

SOURCES: Laws, 2016, ch. 301, § 6, eff from and after July 1, 2016.

ARTICLE 5.

SMALL LOAN PRIVILEGE TAX LAW.

SEC.

75-67-201. Title of article.
75-67-203. Definitions.
75-67-205. License required.
75-67-207. Responsibilities for administration of Article 5.
75-67-209. Application for license or renewal license.
75-67-211. Bond required.
75-67-213. Annual license fee.
75-67-215. Penalties.
75-67-217. Procedure when application is filed; issuance or denial of license generally; prohibition against issuance of licenses to banks, trust companies, etc.
75-67-219. Return of bond and fees upon denial of application for license.
75-67-221. Hearing when license denied.
75-67-223. Procedure at the hearing.
75-67-225. Review of adverse decision.
75-67-227. Forms of license.
75-67-229. Additional licenses and changes of location.
75-67-231. Preservation of records.
75-67-233. Additional bonds; when required.
75-67-235. Discontinuance of business and surrender of license.
75-67-237. Revocation of license; procedure and review by court.
75-67-239. Disposition of funds collected under Article 5.
75-67-241. Exemptions.
75-67-243. Rules and regulations.
75-67-244. Commissioner authorized to examine persons suspected of conducting business requiring a license.
75-67-245. Licensee; freedom from liability.
75-67-247. Municipal and county ordinances void if overly restrictive.

§ 75-67-201. Title of article.

This article shall be known as and referred to as "The Small Loan Privilege Tax Law" of this state.

SOURCES: Codes, 1942, § 5591-31; Laws, 1958, ch. 168, § 1, eff from and after July 1, 1958.

Editor's Note — A transaction subject to Chapter 9 of this title may also be subject to the provisions of §§ 75-67-201 through 75-67-243. In the event of a conflict between said Chapter 9 and §§ 75-67-201 through 75-67-243, the provisions of the latter will control. See § 75-9-201(c).

Cross References — Finance companies, see § 27-21-1 et seq.

Motor vehicle sales finance, see § 63-19-1 et seq.

Maximum finance charges which may be charged by licensees under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law, see § 75-17-21.

Provision that a licensee under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law may receive finance charges and late payment charges regardless of the purpose for which an extension of credit is made, see § 75-17-25.

Exemption from regulation as real estate broker, see § 75-35-3.

Pawnbrokers, see § 75-67-1 et seq.

Small loan regulatory law, see § 75-67-101 et seq.

JUDICIAL DECISIONS

1. In general.

A money lender duly licensed under this statute may nevertheless be liable for the tax imposed by Code 1942, §§ 9341-9351 on finance companies. Attala Loans, Inc. v. Standard Disct. Corp., 249 Miss. 282, 161 So. 2d 631 (1964).

A loan broker's service charges were not interest rendering loan usurious. Hooper v. Aetna Fin. Co., 244 Miss. 799, 145 So. 2d 907 (1962).

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers §§ 19, 20.

CJS. 47 C.J.S., Interest & Usury; Consumer Credit §§ 444-446.

§ 75-67-203. Definitions.

The following words and phrases, when used in this article, shall, for the purposes of this article have the meanings respectively ascribed to them in this section, except where the context clearly describes and indicates a different meaning:

(a) The word "person" shall mean and include every natural person, firm, corporation, copartnership, joint stock or other association or organization, and any other legal entity whatsoever;

(b) The term "licensee" shall mean and include every person, except those specifically exempt by the provisions of this article, who, in addition to any other right and powers he or it might otherwise possess, shall engage in the business of lending money, either directly or indirectly, to be paid back in monthly installments, or other regular installments for periods of more or less than one (1) month, and whether or not the lender requires security from the borrower as indemnity for the repayment of the loan;

(c) The word "commissioner" shall mean the Commissioner of Banking and Consumer Finance of the State of Mississippi;

(d) The word "department" shall mean the Department of Banking and Consumer Finance of the State of Mississippi;

(e) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

SOURCES: Codes, 1942, § 5591-32; Laws, 1958, ch. 168, § 2; Laws, 1996, ch. 423, § 6; Laws, 2000, ch. 621, § 15, eff from and after passage (approved May 23, 2000.)

Cross References — Exemption from regulation as real estate broker, see § 75-35-3.

Definitions under the Small Loan Regulatory Law, see § 75-67-103.

§ 75-67-205. License required.

No person shall engage in the business of lending money except as authorized by this article and by the Small Loan Regulatory Law (Section 75-67-101 et seq.), and without being the holder of a valid and subsisting license to engage in such business as provided herein, furnishing the requisite bond as required hereby, and paying the privilege license tax imposed hereby. Every person engaged in the business of lending money as authorized by this article shall have a physical office located in the State of Mississippi. A separate license is required for each office doing business in the State of Mississippi. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment in the discretion of the court.

SOURCES: Codes, 1942, § 5591-33; Laws, 1958, ch. 168, § 3; Laws, 1996, ch. 423, § 7, eff from and after July 1, 1996.

Cross References — Finance companies, see § 27-21-13.

Exemption from regulation as real estate broker, see § 75-35-3.

License requirement under the Small Loan Regulatory Law, see § 75-67-105.

Additional licenses for other locations, see § 75-67-229.

All files on licensees, who have ceased business under Small Loan Regulatory Law and Small Loan Privilege Tax Law to be maintained in accordance with retention periods established by State Records Committee, see § 75-67-231.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former § 27-17-239.

6. In general.

I. Under Current Law.

1. In general.

Rule of 78th's method of computation in case of prepayment of loan by one licensed under Small Loan Privilege Tax Act, § 75-67-201 et seq., as authorized by provision of Small Loan Regulatory Act, § 75-67-127(1)(c), is not affected by general usury statute, § 75-17-31, where laws at issue originated in same enactment (Chapter 565, Laws, 1974) and are reasonably assumed to comprise rational and noncontradictory scheme, and where special and particular statutes control over general usury statute in event of conflicts between legislative provisions. Benoit v. United Cos. Mtg., Inc., 504 So. 2d 196 (Miss. 1987).

2.-5. [Reserved for future use.]

II. Under Former § 27-17-239.

6. In general.

In determining whether a money lender is subject to privilege taxes payable where the interest charged for loans exceeds a specified percentage, premiums on insurance which the lender requires the borrower to carry in companies owned by the lender, at the rates charged by other insurers, are not to be treated as interest. Winter v. Murdock Acceptance Corp., 246 Miss. 698, 149 So. 2d 516 (1963), suggestion of error sustained in part, overruled in part, 246 Miss. 698, 153 So. 2d 292 (1963).

RESEARCH REFERENCES

ALR. Requisites and sufficiency of statement by lender to borrower, at time of loan or receipt of payment, to comply with small loan statutes in that regard. 14 A.L.R.3d 330.

Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting validity or enforceability of contract. 29 A.L.R.4th 884.

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers §§ 14, 19, 20.

CJS. 47 C.J.S., Money Lenders §§ 423-425, 446.

§ 75-67-207. Responsibilities for administration of Article 5.

The provisions of this article shall be enforced and administered by the state comptroller of banks and his duly authorized agents, representatives and employees.

SOURCES: Codes, 1942, § 5591-34; Laws, 1958, ch. 168, § 4, eff from and after July 1, 1958.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the Commissioner of Banking and Consumer Finance.

Cross References — Exemption from regulation as real estate broker, see § 75-35-3.

JUDICIAL DECISIONS

1. In general.

A loan broker's service charges were not interest rendering loan usurious. Hooper v. Aetna Fin. Co., 244 Miss. 799, 145 So. 2d 907 (1962).

§ 75-67-209. Application for license or renewal license.

If any person shall desire to engage in the business of lending money in the State of Mississippi, as defined herein, such person shall make a written request to the commissioner for the necessary license application form. The commissioner shall mail or deliver the license application form to the person making the request within ten (10) days after receipt of the request by the commissioner. Such person shall make application in writing to the commissioner for a license therefor prior to engaging in such business, which license application shall be made on the forms prepared and provided by the commissioner and which shall give, in addition to such other information as the commissioner may require, the following:

(a) The full name and address of the applicant;

(b) The municipality, county and street address where the business is to be operated;

(c) Whether or not the applicant is an individual, partnership or corporation;

(d) In the case of an individual, both the business and residence address of the applicant;

(e) In the case of a partnership, the names and business and residence addresses of all partners; and

(f) In the case of a corporation, the domicile thereof and the names and business and residence addresses of each officer and director thereof.

All such applications shall be sworn to by the applicant, or a member of the firm in the case of a partnership, or a duly authorized officer in the case of a corporation, and there shall be presented and filed therewith an affidavit, executed before a notary public or other officer authorized to administer oaths, to the effect that the applicant will conduct his or its business in conformity to and will abide by the provisions of this article, all regulations promulgated hereunder and all other applicable statutes of the State of Mississippi.

For a renewal license, the licensee shall furnish on forms provided by the commissioner information that the business is to be continued for one (1) year; such continuation form shall be signed by the applicant, a member of the firm in the case of a partnership, or a duly authorized officer in the case of a corporation, and shall give such information as the commissioner shall require.

SOURCES: Codes, 1942, § 5591-35; Laws, 1958, ch. 168, § 5; Laws, 1991, ch. 567, § 1; Laws, 1996, ch. 423, § 8, eff from and after July 1, 1996.

Cross References — Proceedings upon application, see § 75-67-217.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. Legal Forms 2d, Licenses and Permits § 164:113 (application for moneylender's license).

§ 75-67-211. Bond required.

There shall be presented and filed with such application a good and sufficient bond in the principal amount of one thousand dollars ($1,000.00) written by some surety company authorized to do business in the State of Mississippi, which shall be subject to the approval of the comptroller. Said bond shall be payable to the State of Mississippi and shall be conditioned that the applicant will well and truly operate its business in conformity to and will abide by the laws of this state regulating the handling of loans or lending money, and all regulations promulgated by the department, and all other applicable statutes of the State of Mississippi, and will pay and discharge any and all indebtedness for which such applicant may become liable under the provisions of this article and any other applicable statutes of the State of Mississippi, to the State of Mississippi, or to any county, municipality or other political subdivision thereof, or any person, firm, or corporation whatsoever. Suits may be brought on said bond and against the surety thereon by any person having a right of action against same in the name of the State of Mississippi for the use and benefit of the person having such right of action.

SOURCES: Codes, 1942, § 5591-36; Laws, 1958, ch. 168, § 6, eff from and after July 1, 1958.

Editor's Note — Section 81-1-57 provides that wherever the words "Department of Bank Supervision" or "department" when referring to the Department of Bank Supervision, shall be construed to mean the Department of Banking and Consumer Finance.

Cross References — Disposition of bond and fee upon denial of license, see § 75-67-219.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. Legal Forms 2d, Licenses and Permits § 164:22 (financial responsibility).

§ 75-67-213. Annual license fee.

With each initial application for a license under the provisions of this article, the applicant shall pay to the commissioner at the time of making such application a license fee of Seven Hundred Fifty Dollars ($750.00), and for renewal applications, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00). The licenses issued under the provisions hereof shall be valid for a period of one (1) year from the date of the issuance thereof. Such fee is in addition to any other privilege tax or fee required by law. Within thirty (30) days prior to the expiration of any valid and subsisting license issued hereunder, the holder thereof, if he desires to continue to engage in business in the State of Mississippi, shall file application for a new license in the same manner and under the same conditions herein provided.

SOURCES: Codes, 1942, § 5591-37; Laws, 1958, ch. 168, § 7; Laws, 1975, ch. 438; Laws, 1996, ch. 423, § 9; Laws, 2000, ch. 621, § 16, eff from and after passage (approved May 23, 2000.)

Cross References — Disposition of bond and fees upon denial of license, see § 75-67-219.

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 14.

§ 75-67-215. Penalties.

(1) If any person engages in business as provided for in this article without paying the license fee provided for in this article before commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in the business without a license or after the expiration of a license.

(2) The commissioner may, after notice and hearing as defined in Section 75-67-237 in cases of revocation of license, impose a civil penalty against any licensee if the licensee is adjudged by the commissioner to be in willful violation of the provisions of this article. The civil penalty shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the Consumer Finance Fund of the Department of Banking and Consumer Finance. Any licensee who has been imposed a civil penalty by the commissioner may, within twenty (20) days after the fine is imposed, appeal to the circuit court of the county where the business is being conducted, as in cases from an order of a lesser tribunal. The trial on appeal shall be de novo.

(3) When the commissioner has reasonable cause to believe that a person is violating any provision of this article, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this article, may enter an order requiring the person to stop or to refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

SOURCES: Codes, 1942, § 5591-38; Laws, 1958, ch. 168, § 8; Laws, 2000, ch. 621, § 17; Laws, 2004, ch. 449, § 2, eff from and after passage (approved Apr. 28, 2004.)

§ 75-67-217. Procedure when application is filed; issuance or denial of license generally; prohibition against issuance of licenses to banks, trust companies, etc.

When any application is filed for a license under the provisions of this article and the requisite fee is paid and the necessary bond furnished, the commissioner shall make an investigation for the purpose of determining whether or not the financial responsibility, previous experience, character and general fitness of the applicant (including the members thereof if the applicant is a firm, partnership or association, and the officers and directors thereof, if the applicant is a corporation) are such as to merit the respect and confidence of the community in which the business is to be operated and to warrant the belief that the business will be operated honestly, fairly, efficiently and in compliance with the provisions of the applicable laws of this state, and the regulations promulgated by the department. For applications both for original licenses and for renewal licenses, the commissioner shall make a determination either to approve or to disapprove the issuance of the license, and his determination shall be conveyed in writing to the applicant within sixty (60) days after the date the application is received by the commissioner. If such determination shall be in the affirmative, then the commissioner shall thereupon issue to the applicant a license, in such form as the commissioner may deem proper, for the operation of such business at the location stated in the application, which license shall be valid for a period of one (1) year. If the application is denied, the commissioner shall give written notice of the denial to the applicant, together with the reason or reasons for the denial. If the commissioner does not issue the license or give written disapproval of the issuance of the license within the required sixty-day period, the license shall be deemed approved and issued effective the next calendar day. In all cases where the proper application for a renewal license shall be filed, it shall be lawful for the applicant to operate his business while the application is pending before the commissioner and until the license has been issued or the application has been rejected, as provided in this section. No license under the Small Loan Privilege Tax Law shall be granted to a bank, savings bank, trust company, savings and loan association, building and loan association insurance company, credit union or pawnbroker.

SOURCES: Codes, 1942, § 5591-39; Laws, 1958, ch. 168, § 9; Laws, 1974, ch. 564, § 5; Laws, 1991, ch. 567, § 2, eff from and after July 1, 1991.

Cross References — Definition of the term "finance charge" as used in this section, inter alia, see § 75-17-25.

Small Loan Privelege Tax Law, see §§ 75-67-201 through 75-67-247.

Applications for licenses, see § 75-67-209.

§ 75-67-219. Return of bond and fees upon denial of application for license.

When any application for a license is denied, the commissioner shall return to the applicant the bond furnished by him and shall also return to the applicant one-half (½) of the license fee paid by him, the remaining one-half (½) thereof to be retained by the commissioner, to be disposed of as are all other collections made by the commissioner under the provisions of the Small Loan Regulatory Law (Section 75-67-101 et seq.) of this state.

SOURCES: Codes, 1942, § 5591-40; Laws, 1958, ch. 168, § 10; Laws, 1991, ch. 567, § 3, eff from and after July 1, 1991.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference near the end of the section by substituting "Small Loan Regulatory Law (Section 75-67-101 et seq.)" for "Small Loan Law [Sections 75-67-101 to 75-67-135]." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Disposition of per diem and expense fees, see § 75-67-115.

§ 75-67-221. Hearing when license denied.

When any application for a license is denied, the applicant shall have the right to a hearing thereon by and before the comptroller by filing, within thirty (30) days after the date of the receipt of the notification of denial, a written petition with the comptroller requesting such hearing. Upon the filing of any such request, the comptroller shall fix a date for the hearing, which date shall not be later than thirty (30) days from the date of the filing of the request, and notice shall be given to the public of the fact that such hearing will be held by the publication of a notice in some newspaper published in the county where the business is proposed to be conducted not less than ten (10) days before the date of the hearing, which notice shall specify the date, time, place and purpose of the hearing.

SOURCES: Codes, 1942, § 5591-41; Laws, 1958, ch. 168, § 11; Laws, 1985, ch. 309, eff from and after passage (approved March 8, 1985).

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the Commissioner of Banking and Consumer Finance.

§ 75-67-223. Procedure at the hearing.

All such hearings shall be held and conducted in the office of the comptroller, and the applicant and any and all other interested persons may appear and present such evidence as shall be relevant and material and the comptroller may cause the production and presentation of such evidence as he may deem relevant and material. At all such hearings, the applicant shall have the right to be represented by counsel and to examine and cross-examine any and all witnesses that may testify at such hearing. For the purpose of compelling the attendance of witnesses at such hearing, the comptroller shall have the power to issue subpoenas therefor in the same manner as subpoenas are issued in circuit courts. All witnesses who shall testify at any such hearing shall be sworn in the same manner as witnesses are sworn in the circuit courts and shall be subject to penalties for perjury as is otherwise provided under the laws of this state.

SOURCES: Codes, 1942, § 5591-42; Laws, 1958, ch. 168, § 12, eff from and after July 1, 1958.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the Commissioner of Banking and Consumer Finance.

Cross References — Subpoenas generally, see § 13-3-93.

For the rule governing subpoenas, see Miss. R. Civ. P. 45.

§ 75-67-225. Review of adverse decision.

At all such hearings the comptroller shall cause the evidence presented to be taken down and a record made thereof and he shall make a written finding and decision with reference to the question presented and shall cause same to be included in the record. The original of said record shall be kept as a permanent record by the comptroller and a copy thereof shall be furnished to the applicant. If the application for the license shall be denied by the comptroller as a result of such hearing, the applicant may, within ten (10) days from the date of denial, obtain a review of such denial by a writ of certiorari to the circuit court of the county where said business is proposed to be conducted, as by law in such cases made and provided. The review by said court shall be on the record made before the comptroller and copies of all applications, bonds and other papers and documents of every kind filed with the comptroller in connection with the application, and said hearing shall be included in said record along with the transcript of the evidence.

SOURCES: Codes, 1942, § 5591-43; Laws, 1958, ch. 168, § 13, eff from and after July 1, 1958.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the Commissioner of Banking and Consumer Finance.

§ 75-67-227. Forms of license.

The license shall be in such form as the commissioner may prescribe and, in addition to such other information as the commissioner may deem proper, it shall set forth the name and address of the licensee, and such license shall be kept conspicuously posted in the licensee's place of business. Such licenses shall not be transferable or assignable.

SOURCES: Codes, 1942, § 5591-44; Laws, 1958, ch. 168, § 14; Laws, 1985, ch. 344; Laws, 1996, ch. 423, § 10, eff from and after July 1, 1996.

Cross References — Exemption from regulation as real estate broker, see § 75-35-3.

§ 75-67-229. Additional licenses and changes of location.

Not more than one (1) place of business shall be operated or maintained under the same license, but the commissioner may issue separate licenses to the same licensee for different and separate places of business upon compliance with all of the provisions of this article governing the issuance of licenses with respect to each separate license. If any licensee shall desire to change his place of business within the same municipality during the period for which the license is valid, he shall make written application therefor to the commissioner who shall issue a new license for the unexpired portion of the year showing the new location of the business. However, nothing herein shall authorize or permit a change in the place of business of a licensee to a location outside of the original municipality.

SOURCES: Codes, 1942, § 5591-45; Laws, 1958, ch. 168, § 15; Laws, 2000, ch. 621, § 18, eff from and after passage (approved May 23, 2000.)

Cross References — Exemption from regulation as real estate broker, see § 75-35-3.

§ 75-67-231. Preservation of records.

All applications, bonds, records and other papers and documents filed with the commissioner in connection with applications for an issuance of all licenses shall be preserved by the commissioner as a permanent record in his office, and shall be available to the public in accordance with the Mississippi Public Records Act (Section 25-61-1 et seq., Mississippi Code of 1972); however, all files on licensees, as defined in Section 75-67-103, Mississippi Code of 1972, who have ceased business under the Small Loan Regulatory Law (Section 75-67-101 et seq.), Mississippi Code of 1972) and the Small Loan Privilege Tax Law (Section 75-67-201 et seq.), Mississippi Code of 1972) shall be maintained in accordance with retention periods established by the State Records Committee.

SOURCES: Codes, 1942, § 5591-46; Laws, 1958, ch. 168, § 16; Laws, 1994, ch. 320, § 7, eff from and after July 1, 1994.

Cross References — State Records Committee, see § 25-59-7.

§ 75-67-233. Additional bonds; when required.

If the comptroller shall find, at any time, that any bond filed with him by a licensee under the provisions of this article is insecure for any reason, or if same has been exhausted, the comptroller shall require an additional bond in the amount of one thousand dollars ($1,000.00) conditioned as provided by this article. If, after ten (10) days' written notice by the comptroller, any licensee shall fail, neglect or refuse to furnish such additional bond, the license held by such persons shall be forthwith cancelled by the comptroller. Notice of all suits filed against licensee and the surety on his bond shall be given the comptroller at the time of the institution thereof, and notice of the result or outcome of all such suits shall be given the comptroller within ten (10) days after the termination thereof.

SOURCES: Codes, 1942, § 5591-47; Laws, 1958, ch. 168, § 17, eff from and after July 1, 1958.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the Commissioner of Banking and Consumer Finance.

§ 75-67-235. Discontinuance of business and surrender of license.

Any person holding a license under the provisions of this article may discontinue his business by giving the comptroller written notice thereof and surrendering his license to the comptroller, but such action shall in nowise relieve the licensee or the surety on his bond from any liability which may have accrued or existed at the time of the surrender of such license nor shall impair or affect the obligation of any lawful pre-existing contract between the licensee and any other person, firm or corporation.

SOURCES: Codes, 1942, § 5591-48; Laws, 1958, ch. 168, § 18, eff from and after July 1, 1958.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the Commissioner of Banking and Consumer Finance.

§ 75-67-237. Revocation of license; procedure and review by court.

The commissioner may, if he be of the opinion that reasonable grounds exist to believe that a licensee has willfully violated any of the provisions of this article, or the Small Loan Regulatory Law (Section 75-67-101 et seq.), or any regulation of the commissioner made under the authority of either, or any other applicable statute of this state, upon written notice to the licensee distinctly specifying the charges against him, cite the licensee to appear before him to show cause why his license should not be revoked. Such notice shall fix the date, time and place of the hearing, which hearing shall not be held less than ten (10) days from the date of such notice. At such hearing the licensee shall have the right to be heard either in person or by counsel, to produce witnesses in his behalf, and to examine and cross-examine all witnesses who may testify.

If, after the hearing, the commissioner finds that the licensee has been guilty of willfully violating any provision of this article, or the Small Loan Regulatory Law (Section 75-67-101 et seq.), or any regulations made by the commissioner under the authority of either, or any other applicable statute of the State of Mississippi, the commissioner shall forthwith revoke the license involved; otherwise, the proceedings shall be dismissed. At all such hearings, the commissioner shall cause the evidence to be taken down and a record made thereof and he shall make a written finding and decision and shall cause same to be included in the record. The original of the record shall be retained by the commissioner and a copy thereof shall be furnished to the licensee. Any licensee whose license is revoked by the commissioner may, within twenty (20) days after such revocation, appeal to the circuit court of the county where the business is being conducted, as in cases of appeal from an order of a lesser tribunal. The trial on appeal shall be de novo.

Any licensee who is exempt from liability for an act or omission under Section 75-67-245 shall not have his license revoked under this section for the same act or omission.

SOURCES: Codes, 1942, § 5591-49; Laws, 1958, ch. 168, § 19; Laws, 1997, ch. 332, § 17, eff from and after passage (approved March 17, 1997).

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the Commissioner of Banking and Consumer Finance.

Cross References — Penalties for contracting for or exacting finance or interest rate in excess of legal maximum, see § 75-67-119.

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 34 et seq.

§ 75-67-239. Disposition of funds collected under Article 5.

All fees, license tax and penalties provided for in this article which are payable to the commissioner shall, when collected, be deposited in a special and separate fund to be known as the "Consumer Finance Fund" and shall be expended by the commissioner solely and exclusively for the purpose of administering and enforcing the provisions of this article and the Small Loan Regulatory Law (Section 75-67-101 et seq.).

SOURCES: Codes, 1942, § 5591-50; Laws, 1958, ch. 168, § 20; Laws, 1985, ch. 345, § 4, eff from and after July 1, 1985.

§ 75-67-241. Exemptions.

This article shall not apply to any person, firm, partnership, corporation or association doing business under any of the laws of this state relating to banks, savings banks, trust companies, building and loan associations, insurance companies, credit unions or pawnbrokers; nor shall this article apply to any person, firm, partnership, corporation or association concerning loans made to the employees or farm tenants of such person, firm, partnership or corporation or association; nor to loans or advances made to be used in or in the furtherance of farming or agricultural operations; nor to loans insured or guaranteed by the United States or any of its agencies; nor to persons, firms, partnerships, associations or corporations making loans only secured by real estate; nor to dealers and sellers or purchasers of conditional sales or retained title contracts on real or personal property; nor a member of an affiliated group as defined by Section 1504 of the Internal Revenue Code of 1986, as amended, on May 24, 1995, with respect to loans made by one (1) member of the affiliated group to another and who is not otherwise engaged in the business of loaning money secured by tangible personal property; nor an occasional lender not regularly engaged in the business of lending money, but such lender shall be governed by the usury statutes of this state.

SOURCES: Codes, 1942, § 5591-51; Laws, 1958, ch. 168, § 21; Laws, 1995, ch. 457, § 2; Laws, 1996, ch. 423, § 11, eff from and after July 1, 1996.

Federal Aspects — Section 1504 of the Internal Revenue Code is codified at 26 USCS § 1504.

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 15 et seq.

§ 75-67-243. Rules and regulations.

The commissioner shall have the power and authority to adopt, promulgate and issue such rules and regulations, not inconsistent with this article, or any other statute of the State of Mississippi, as he shall deem necessary for the purpose of the administration of this article. A copy of every rule and regulation promulgated by the commissioner shall be filed in accordance with the Administrative Procedures Law, Section 25-43-1 et seq.

SOURCES: Codes, 1942, § 5591-52; Laws, 1958, ch. 168, § 22; Laws, 1996, ch. 423, § 12, eff from and after July 1, 1996.

Editor's Note — Section 81-1-117 abolished the office of state comptroller, and provided that the functions, duties and responsibilities would be assumed by the Commissioner of Banking and Consumer Finance.

Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq., referred to in this section, shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Cross References — Maximum finance charges which may be charged by licensees under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law, see § 75-17-21.

Provision that a licensee under the Small Loan Regulatory Law and the Small Loan Privilege Tax Law may receive finance charges and late payment charges regardless of the purpose for which an extension of credit is made, see § 75-17-25.

Enumeration of loan charges associated with loan procured by consumer loan broker, see § 81-19-21.

§ 75-67-244. Commissioner authorized to examine persons suspected of conducting business requiring a license.

The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business that requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this article, including without limitation the conduct of business without a license as required under this article.

SOURCES: Laws, 2000, ch. 621, § 19, eff from and after passage (approved May 23, 2000.)

§ 75-67-245. Licensee; freedom from liability.

(1) A licensee under this article shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) A licensee under this article, acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.

SOURCES: Laws, 1997, ch. 332, § 13, eff from and after passage (approved March 17, 1997).

Cross References — Licensee exempt from liability for act or omission under this section shall not have license revoked under § 75-67-237 for the same act or omission, see § 75-67-237.

§ 75-67-247. Municipal and county ordinances void if overly restrictive.

Municipalities and counties in this state may enact ordinances that are in compliance with, but not more restrictive than, the provisions of this article. Any order, ordinance or regulation existing on April 28, 2004 of Sections 75-67-115, 75-67-215, 75-67-247 and this section, or any order, ordinance or regulation enacted after April 28, 2004, of Sections 75-67-115, 75-67-215, 75-67-247 and this section that conflicts with any of the provisions of this article shall be void to the extent of the conflict.

SOURCES: Laws, 2004, ch. 449, § 4, eff from and after passage (approved Apr. 28, 2004.)

ARTICLE 7.

MISSISSIPPI PAWNSHOP ACT.

SEC.

75-67-301. Short title.
75-67-303. Definitions.
75-67-305. Information required to be recorded on pawn ticket; detailed recording of transactions required.
75-67-307. Information required to be pre-printed on pawn ticket.
75-67-309. Statement pledgor or seller is rightful owner; pawnbroker to maintain record of transactions to law enforcement agencies; electronic reporting of transactions to law enforcement agencies; time limit for resale.
75-67-311. Redemption of pledged goods; failure to redeem.
75-67-313. Pawnshop charge; limit on interest, charges and fees.
75-67-315. Prohibited acts of pawnbrokers, and clerks, agents or employees of pawnbroker.
75-67-317. Redemption or repurchase of pledged goods; liability of pawnbroker for lost or damaged pledged goods; lost, destroyed or stolen pawn ticket.
75-67-319. Lien by pawnbroker; waiting period.
75-67-321. License required to engage in business as pawnbroker; license fee; penalty for late payment of fee.
75-67-323. Eligibility requirements for license; posting of license and sign in conspicuous place; prelicensing education requirement.
75-67-325. Suspension or revocation of license; conditional license; surrender of license; reinstatement of license; enforcement by Commissioner of Banking.
75-67-327. Application for new pawnshop license, transfer of existing license or approval for change in ownership.
75-67-329. Confiscation of pledged or purchased goods.
75-67-331. Penalty for failure to secure a license.
75-67-333. Additional civil and criminal penalties for violations of this article; injunctions.
75-67-334. Authority of commissioner to examine persons suspected of violating licensure requirements.
75-67-335. Liability of rightful owner to pawnbroker where pledged goods are found to be stolen; restitution awarded upon successful prosecution.
75-67-337. Severability provision.
75-67-339. Time limit for existing pawnbrokers to apply for license and pay fee.

75-67-341.	Authority of Commissioner of Banking to develop forms; commissioner may examine records without notice.
75-67-343.	Authority of municipalities to enact ordinances complying with, but not more restrictive than, provision of this article.

§ 75-67-301. Short title.

This article shall be known and may be cited as the "Mississippi Pawnshop Act."

SOURCES: Laws, 1993, ch. 598, § 1, eff from and after July 1, 1993.

Editor's Note — Provisions similar to the provisions of this article were formerly found in Article 1, § 75-67-1 et seq.

Cross References — Local privilege tax on pawnbrokers, see § 27-17-299.

Finance companies, see § 27-21-1 et seq.

Small loan regulatory law, see § 75-67-101 et seq.

ATTORNEY GENERAL OPINIONS

Nothing in Mississippi Pawnshop Act, Section 75-67-301 et seq., should be construed to limit court of competent jurisdiction from issuing writs, orders or warrants to allow law enforcement authorities to search for, seize or order the return of stolen goods. Pacific, Jan. 20, 1994, A.G. Op. #93-0839.

A submitted document appeared to be in the form of a pawn which might be governed by the provisions of the Mississippi Pawnshop Act. Gunn, Feb. 11, 2000, A.G. Op. #2000-0053.

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Assumpsit, Forms 1 et seq.

12B Am. Jur. Legal Forms 2d, Moneylenders and Pawnbrokers § 177:1 et seq.

Practice References. Commercial Finance Guide (Matthew Bender).

Commercial Loan Documentation Guide (Matthew Bender).

Consumer Credit Law Manual (Matthew Bender).

Kenneth M. Lapine, Consumer Credit: Laws, Transactions and Forms (Matthew Bender).

§ 75-67-303. Definitions.

The following words and phrases used in this article shall have the following meanings unless the context clearly indicates otherwise:

(a) "Pawnbroker" means any person engaged in whole or in part in the business of lending money on the security of pledged goods left in pawn, or in the business of purchasing tangible personal property to be left in pawn on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time; provided, however, that the following are exempt from the definition of "pawnbroker" and from the provisions of this article: any bank which is regulated by the State Department of Banking and Consumer Finance, the Comptroller of the Currency of the United States, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System or any other federal or state authority and all affiliates of such bank, and additionally any bank or savings and loan association whose deposits or accounts are eligible for insurance by the Bank Insurance Fund or the Savings Association Insurance Fund or other fund administered by Federal Deposit Insurance Corporation or any successor thereto, and all affiliates of such banks and savings and loan associations, any state or federally chartered credit union and any finance company subject to licensing and regulation by the State Department of Banking and Consumer Finance.

(b) "Pawnshop" means the location at which or premises in which a pawnbroker regularly conducts business.

(c) "Pawn transaction" means any loan on the security of pledged goods or any purchase of pledged goods on the condition that the pledged goods are left with the pawnbroker and may be redeemed or repurchased by the seller for a fixed price within a fixed period of time. A "pawn transaction" does not include the pledge to or the purchase by a pawnbroker of real or personal property from a customer followed by the sale of the leasing of that same property back to the customer in the same or a related transaction and such is not permitted by this article.

(d) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any legal entity however organized.

(e) "Pledged goods" means tangible personal property other than choses in action, securities, or printed evidence of indebtedness, which property is purchased by, deposited with, or otherwise actually delivered into the possession of a pawnbroker in connection with a pawn transaction.

(f) "Commissioner" means the Mississippi Commissioner of Banking and Consumer Finance, or his designee, as the designated official for the purpose of enforcing this article.

(g) "Appropriate law enforcement agency" means the sheriff of each county in which the pawnbroker maintains an office, or the police chief of the municipality or law enforcement officers of the Department of Public Safety in which the pawnbroker maintains an office.

(h) "Attorney General" means the Attorney General of the State of Mississippi.

(i) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

SOURCES: Laws, 1993, ch. 598, § 2; Laws, 2001, ch. 503, § 1, eff from and after passage (approved Mar. 24, 2001.)

ATTORNEY GENERAL OPINIONS

The Mississippi Pawn Shop Act, which applies to pawn brokers operating within the State of Mississippi, does not apply to junk dealers and second hand dealers who are not engaged in whole or in part in the type of business defined and described in Section 75-67-303(a) and (c). Skinner, August 30, 1996, A.G. Op. #96-0549.

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

§ 75-67-305. Information required to be recorded on pawn ticket; detailed recording of transactions required.

(1) At the time of making the pawn or purchase transaction, the pawnbroker shall enter upon the pawn ticket a record of the following information which shall be typed or written in ink and in the English language:

(a) A clear and accurate description of the property, including the following:

(i) Brand name;

(ii) Model number;

(iii) Serial number;

(iv) Size;

(v) Color, as apparent to the untrained eye;

(vi) Precious metal type, weight and content, if known;

(vii) Gemstone description, including the number of stones;

(viii) In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length and finish; and

(ix) Any other unique identifying marks, numbers, names or letters;

(b) The name, residence address and date of birth of pledgor or seller;

(c) Date of pawn or purchase transaction;

(d) Driver's license number or social security number or Mississippi identification card number, as defined in Section 45-35-1, Mississippi Code of 1972, of the pledgor or seller or identification information verified by at least two (2) forms of identification, one (1) of which shall be a photographic identification;

(e) Description of the pledgor including approximate height, sex and race;

(f) Amount of cash advanced;

(g) The maturity date of the pawn transaction and the amount due; and

(h) The monthly rate and pawn charge. Such rates and charges shall be disclosed using the requirements prescribed in Regulation Z (Truth in Lending) of the rules and regulations of the Board of Governors of the Federal Reserve.

(2) Each pawn or purchase transaction document shall be consecutively numbered and entered in a corresponding log or record book. Separate logs or record books for pawn and purchase transactions shall be kept.

(3) Records may be in the form of traditional hard copies, computer printouts or magnetic media if readily accessible for viewing on a screen with the capability of being promptly printed upon request.

(4) Every licensee shall maintain a record which indicates the total number of accounts and the total dollar value of all pawn transactions outstanding as of December 31 of each year.

SOURCES: Laws, 1993, ch. 598, § 3; Laws, 2001, ch. 503, § 7, eff from and after passage (approved Mar. 24, 2001.)

Cross References — Information required by this section to be recorded on written statement used to redeem property for which original pawn ticket was lost, see § 75-67-317.

Federal Aspects — Regulation Z of the Truth in Lending Act is codified at 12 CFR Part 226.

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

12B Am. Jur. Legal Forms 2d, Moneylenders and Pawnbrokers § 177:10 et seq. (pawn ticket).

§ 75-67-307. Information required to be pre-printed on pawn ticket.

The following shall be printed on all pawn tickets:

(a) The statement that "Any personal property pledged to a pawnbroker within this state is subject to sale or disposal when there has been no payment made on the account for a period of thirty (30) days past maturity date of the original contract; no further notice is necessary";

(b) The statement that "The pledgor of this item attests that it is not stolen, it has no liens or encumbrances against it, and the pledgor has the right to sell or pawn the item";

(c) The statement that "The item is redeemable only by the bearer of this ticket or by identification of the person making the pawn"; and

(d) A blank line for the pledgor's signature.

SOURCES: Laws, 1993, ch. 598, § 4, eff from and after July 1, 1993.

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 26 et seq.

12B Am. Jur. Legal Forms 2d, Moneylenders and Pawnbrokers § 177:10 et seq. (pawn ticket).

§ 75-67-309. Statement pledgor or seller is rightful owner; pawnbroker to maintain record of transactions to law enforcement agencies; electronic reporting of transactions to law enforcement agencies; time limit for resale.

(1) The pledgor or seller shall sign a statement verifying that the pledgor or seller is the rightful owner of the goods or is entitled to sell or pledge the goods and shall receive an exact copy of the pawn ticket which shall be signed or initialed by the pawnbroker or any employee of the pawnbroker.

(2) The pawnbroker shall maintain a record of all transactions of pledged or purchased goods on the premises. A pawnbroker shall upon request provide to the appropriate law enforcement agency a complete record of all transactions. These records shall be a correct copy of the entries made of the pawn or purchase transaction, except as to the amount of cash advanced or paid for the goods and monthly pawnshop charge. If the law enforcement agency supplies the appropriate computer software and the pawnbroker has the appropriate computer hardware, all transactions shall be made available by means of electronic transmission through a modem or similar device or by providing a computer disc to the law enforcement agency within seventy-two (72) hours of the transaction. Any pawnbroker who is recording transactions through the use of computer hardware on March 24, 2001, and is provided such appropriate software shall not cease or alter the use of his computer hardware unless authorized by the law enforcement agency.

(3) All goods purchased across the counter by the pawnbroker shall be maintained on the premises by the pawnbroker for at least fourteen (14) calendar days if the pawnbroker makes available all transactions either electronically or on computer disc to the appropriate law enforcement agency as provided in subsection (2) above. Otherwise, the pawnbroker shall maintain on the premises the purchased goods for twenty-one (21) calendar days.

SOURCES: Laws, 1993, ch. 598, § 5; Laws, 2001, ch. 503, § 8, eff from and after passage (approved Mar. 24, 2001.)

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

§ 75-67-311. Redemption of pledged goods; failure to redeem.

A pledgor shall have no obligation to redeem pledged goods or make any payment on a pawn transaction. Pledged goods not redeemed within thirty (30) days following the originally fixed maturity date shall automatically be forfeited to the pawnbroker by operation of this section, and absolute right, title and interest in and to such goods shall automatically vest to the pawnbroker.

SOURCES: Laws, 1993, ch. 598, § 6, eff from and after July 1, 1993.

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

§ 75-67-313. Pawnshop charge; limit on interest, charges and fees.

(1) A pawnbroker may contract for and receive a pawnshop charge in lieu of interest or other charges for all services, expenses, cost and losses of every nature not to exceed twenty-five percent (25%) of the principal amount, per month, advanced in the pawn transaction.

(2) Any interest, charge, or fees contracted for or received, directly or indirectly, in excess of the amount permitted under subsection (1) of this section shall be uncollectible and the pawn transaction shall void. The pawnshop charge allowed under subsection (1) of this section shall be deemed earned, due and owing as of the date of the pawn transaction and a like sum shall be deemed earned, due and owing on the same day of the succeeding month.

SOURCES: Laws, 1993, ch. 598, § 7, eff from and after July 1, 1993.

Cross References — Secured transactions under Uniform Commercial Code, see §§ 75-9-201, 75-9-203.

Interest and usury, generally, see § 75-17-1 et seq.

Small loan privilege tax, see § 75-67-201 et seq.

Additional fee for lost pawn ticket authorized, see § 75-67-317.

RESEARCH REFERENCES

ALR. Admissibility, in civil case involving usury, of evidence of other transactions. 67 A.L.R.2d 232.

Payments under (ostensibly) independent contract as usury. 81 A.L.R.2d 1280.

Usury: requiring borrower to pay for insurance as condition of loan. 91 A.L.R.2d 1344.

Am Jur. 44B Am. Jur. 2d, Interest and Usury §§ 87, 90, 96 et seq.

53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

CJS. 47 C.J.S., Interest & Usury; Consumer Credit §§ 577, 581, 583-586.

§ 75-67-315. Prohibited acts of pawnbrokers, and clerks, agents or employees of pawnbroker.

A pawnbroker and any clerk, agent or employee of such pawnbroker shall not:

(a) Fail to make an entry of any material matter in his record book;

(b) Make any false entry therein;

(c) Falsify, obliterate, destroy or remove from his place of business such records, books or accounts relating to the licensee's pawn transaction;

(d) Refuse to allow the commissioner, the appropriate law enforcement agency, the Attorney General or any other duly authorized state or federal law enforcement officer to inspect his pawn records or any pawn goods in his possession during the ordinary hours of business or other acceptable time to both parties;

(e) Fail to maintain a record of each pawn transaction for four (4) years;

(f) Accept a pledge or purchase property from a person under the age of eighteen (18) years;

(g) Make any agreement requiring the personal liability of a pledgor or seller, or waiving any of the provisions of this article or providing for a maturity date less than thirty (30) days after the date of the pawn transaction;

(h) Fail to return or replace pledged goods to a pledgor or seller upon payment of the full amount due the pawnbroker unless the pledged goods have been taken into custody by a court or a law enforcement officer or agency;

(i) Sell or lease, or agree to sell or lease, pledged or purchased goods back to the pledgor or back to the seller in the same or related transaction;

(j) Sell or otherwise charge for insurance in connection with a pawn transaction;

(k) Remove pledged goods from the premises within thirty (30) days following the originally fixed maturity date;

(*l*) Accept a pledge or purchase property when such property has manufacturer's serial numbers which have been obviously removed and/or obliterated.

SOURCES: Laws, 1993, ch. 598, § 8; Laws, 2001, ch. 503, § 9, eff from and after passage (approved Mar. 24, 2001.)

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

§ 75-67-317. Redemption or repurchase of pledged goods; liability of pawnbroker for lost or damaged pledged goods; lost, destroyed or stolen pawn ticket.

(1) Any person properly identifying himself as pledgor or as authorized representative of the pledgor and presenting a pawn ticket to the pawnbroker shall be entitled to redeem or repurchase the pledged goods described in such ticket. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with like kinds of merchandise and proof of replacement shall be defense to any prosecution. For the purpose of this subsection, "lost" includes destroyed or having disappeared because of any willful neglect that results in the pledged goods being unavailable for return to the pledgor.

(2) If the pawn ticket is lost, destroyed or stolen, the pledgor shall so notify the pawnbroker in writing, and receipt of such notice shall invalidate

such pawn ticket, if the pledged goods have not been previously redeemed. Before delivering the pledged goods or issuing a new pawn ticket, the pawnbroker shall require the pledgor to make a written statement of the loss, destruction or theft of the ticket. The pawnbroker shall record on the written statement the identifying information required by Section 75-67-305, the date the statement is given and the number of the pawn ticket lost, destroyed or stolen. This statement shall be signed by the pawnbroker or pawnshop employee who accepts the statement from the pledgor. A pawnbroker is entitled to a fee not to exceed Five Dollars ($5.00) in connection with each lost, destroyed or stolen pawn ticket and the taking of a properly prepared written statement for the pawn ticket.

SOURCES: Laws, 1993, ch. 598, § 9, eff from and after July 1, 1993.

Cross References — Limit on interest, charges and fees pawnbroker may charge, see § 75-67-313.

RESEARCH REFERENCES

ALR. Liability of pawnbroker for theft by third person of pawned property. 65 A.L.R.2d 1259.

Recoverability of compensatory damages for mental anguish or emotional distress for breach of contract to lend money. 52 A.L.R.4th 826.

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

§ 75-67-319. Lien by pawnbroker; waiting period.

(1) A pawnbroker shall have a lien on the pledged goods pawned for the money advanced and the pawnshop charge owed, but not for other debts due to him. He shall retain possession of the pledged goods, except as otherwise herein provided, until his lien is satisfied.

(2) Pledged goods not redeemed on or before the maturity date, if fixed and set out in the pawn ticket issued in connection with any transaction, shall be held by the pawnbroker for thirty (30) days following such date and may be redeemed or repurchased by the pledgor or seller within such period by the payment of the originally agreed redemption price, and the payment of an additional pawnshop charge equal to the original pawnshop charge.

SOURCES: Laws, 1993, ch. 598, § 10, eff from and after July 1, 1993.

Cross References — Validity of assignment or pledge of wages, see § 71-1-45.

RESEARCH REFERENCES

ALR. Recoverability of compensatory damages for mental anguish or emotional distress for breach of contract to lend money. 52 A.L.R.4th 826.

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

§ 75-67-321. License required to engage in business as pawnbroker; license fee; penalty for late payment of fee.

(1) A person may not engage in business as a pawnbroker or otherwise portray himself as a pawnbroker unless the person has a valid license authorizing engagement in the business. A separate license is required for each place of business under this article. The commissioner may issue more than one (1) license to a person if that person complies with this article for each license. A new license or application to transfer an existing license is required upon a change, directly or beneficially, in the ownership of any licensed pawnshop and an application shall be made to the commissioner in accordance with this article.

(2) When a licensee wishes to move a pawnshop to another location, the licensee shall give thirty (30) days' prior written notice to the commissioner who shall amend the license accordingly.

(3) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay the commissioner a license fee, which includes premiums for examinations, of Five Hundred Dollars ($500.00), and on or before December 1 of each year thereafter, an annual renewal fee, which includes premiums for examinations, of Three Hundred Fifty Dollars ($350.00). However, when more than one (1) license to an applicant is issued, the commissioner, for each subsequent license, may only impose a fee, which includes premiums for examinations, of Three Hundred Fifty Dollars ($350.00) at the time of application, and an annual renewal fee, which includes premiums for examinations, of Three Hundred Fifty Dollars ($350.00) on or before December 1 of each year thereafter. If the annual fee remains unpaid thirty (30) days after December 1, the license shall thereupon expire, but not before December 31 of any year for which the annual fee has been paid. If any person engages in business as provided for in this article without paying the license fee provided for in this article commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in such business without a license or after the expiration of a license. All licensing fees and penalties authorized in this section shall be paid into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) Notwithstanding other provisions of this article, the commissioner may issue a temporary license authorizing the operator of a pawnshop on the receipt of an application to transfer a license from one person to another or on the receipt of an application for a license involving principals and owners that are substantially identical to those of an existing licensed pawnshop. The temporary license is effective until the permanent license is issued or denied.

(5) Notwithstanding other provisions of this article, neither a new license nor an application to transfer an existing license shall be required upon any change, directly or beneficially, in the ownership of any licensed pawnshop

incorporated under the laws of this state or any other state so long as the licensee continues to operate as a corporation doing a pawnshop business under the license. The commissioner may, however, require the licensee to provide such information as he deems reasonable and appropriate concerning the officer and directors of the corporation and persons owning in excess of twenty-five percent (25%) of the outstanding shares of the corporation.

SOURCES: Laws, 1993, ch. 598, § 11; Laws, 2001, ch. 503, § 2, eff from and after passage (approved Mar. 24, 2001.)

RESEARCH REFERENCES

ALR. Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting validity or enforceability of contract. 29 A.L.R.4th 884.

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers §§ 1 et seq.

§ 75-67-323. Eligibility requirements for license; posting of license and sign in conspicuous place; prelicensing education requirement.

(1) To be eligible for a pawnbroker license, an applicant shall:

(a) Operate lawfully and fairly within the purposes of this article;

(b) Not have been convicted of a felony in the last ten (10) years or be active as a beneficial owner for someone who has been convicted of a felony in the last ten (10) years;

(c) File with the commissioner a bond with good security in the penal sum of Ten Thousand Dollars ($10,000.00), payable to the State of Mississippi for the faithful performance by the licensee of the duties and obligations pertaining to the business so licensed and the prompt payment of any judgment which may be recovered against such licensee on account of damages or other claim arising directly or collaterally from any violation of the provisions of this article; such bond shall not be valid until it is approved by the commissioner; such applicant may file, in lieu thereof, cash, a certificate of deposit, or government bonds in the amount of Ten Thousand Dollars ($10,000.00); such deposit shall be filed with the commissioner and is subject to the same terms and conditions as are provided for in the surety bond required herein; any interest or earnings on such deposits are payable to the depositor;

(d) File with the commissioner an application accompanied by the initial license fee required in this article;

(e) Submit a set of fingerprints from any local law enforcement agency. In order to determine the applicant's suitability for license, the commissioner shall forward the fingerprints to the Department of Public Safety; and if no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(2) Every licensee shall post his license in a conspicuous place at each place of business.

(3) Every licensee shall post and display a sign which measures at least twenty (20) inches by twenty (20) inches in a conspicuous place and in easy view of all persons who enter the place of business. The sign shall display bold, blocked letters, easily readable, with the following information: "This pawnshop is licensed and regulated by the Mississippi Department of Banking and Consumer Finance. If you encounter any unresolved problem with a transaction at this location, you are entitled to assistance. Please call or write: Mississippi Department of Banking and Consumer Finance, Post Office Drawer 23729, Jackson, MS 39225-3729; Phone 1-800-844-2499."

(4) From and after December 1, 2010, each application for an initial license shall include evidence of the satisfactory completion of at least six (6) hours of approved prelicensing education, and each application for renewal shall include evidence of the satisfactory completion of at least six (6) hours of approved continuing education, by the owners or designated representative in pawnbroker transactions. Two (2) of the six (6) hours shall consist of instruction on the Mississippi Pawnshop Act and shall be approved by the department once the course is approved by the Mississippi Pawnbrokers Association or the National Pawnbrokers Association.

SOURCES: Laws, 1993, ch. 598, § 12; Laws, 2001, ch. 503, § 3; Laws, 2010, ch. 360, § 1, eff from and after July 1, 2010.

RESEARCH REFERENCES

ALR. Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting validity or enforceability of contract. 29 A.L.R.4th 884.

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

§ 75-67-325. Suspension or revocation of license; conditional license; surrender of license; reinstatement of license; enforcement by Commissioner of Banking.

(1) The commissioner may, after notice and hearing, suspend or revoke any license if it finds that:

(a) The licensee, either knowingly, or without the exercise of due care to prevent the same, has violated any provision of this article;

(b) Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for such license, clearly would have justified the commissioner in refusing such license;

(c) The licensee has aided, abetted or conspired with an individual or person to circumvent or violate the requirement of this article;

(d) The licensee, or a legal or beneficial owner of the license, has been convicted of a crime that the commissioner finds directly relates to the duties and responsibilities of the occupation of pawnbroker.

(2) The commissioner may conditionally license or place on probation a person whose license has been suspended or may reprimand a licensee for a violation of this article.

(3) The manner of giving notice and conducting a hearing as required by subsection (1) of this section shall be performed in accordance with Mississippi Administrative Procedures Law, Section 25-43-1 et seq., Mississippi Code of 1972.

(4) Any licensee may surrender any license by delivering it to the commissioner with written notice of its surrender, but such surrender shall not affect the licensee's civil or criminal liability for acts committed prior thereto.

(5) No revocation, suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any pledgor. Any pawn transaction made without benefit of license is void.

(6) The commissioner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the commissioner in refusing originally to issue a license under this article.

(7) The appropriate local law enforcement agency shall be notified of any licensee who has his license suspended or revoked as provided by this article.

(8) The Commissioner of Banking shall enforce the provisions of this section.

SOURCES: Laws, 1993, ch. 598, § 13, eff from and after July 1, 1993.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1)(c) by substituting "this article" for "the article." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq., referred to in this section, shall be deemed to mean and refer to Section 25-43-1.101 et seq.

RESEARCH REFERENCES

ALR. Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting validity or enforceability of contract. 29 A.L.R.4th 884.

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition or declaration — by license holder — against agency — to enjoin further proceedings to suspend or revoke license on grounds not listed in state statute).

§ 75-67-327. Application for new pawnshop license, transfer of existing license or approval for change in ownership.

(1) An application for a new pawnshop license, the transfer of an existing pawnshop license or the approval of a change in the ownership of a licensed pawnshop shall be under oath and shall state the full name and place of residence of the applicant, the place where the business is to be conducted and

other relevant information required by the commissioner. If the applicant is a partnership, the application shall state the full name of each partner. If the applicant is a corporation, the application shall state the full name and address of each officer, shareholder and director.

(2) Notwithstanding the provision of this article, the application need not state the full name and address of each shareholder, if the applicant is owned directly or beneficially by a person which as an issuer has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 or is an issuer of securities which is required to file reports with the Securities and Exchange Commission pursuant to Section 15(d) of the Securities Exchange Act, provided that such person files with the commissioner such information, documents and reports as are required by the provision of the Securities Exchange Act to be filed by such issuer with the Securities and Exchange Commission.

SOURCES: Laws, 1993, ch. 598, § 14, eff from and after July 1, 1993.

Federal Aspects — Section 12 of the Securities Exchange Act of 1934 is codified as 15 USCS § 78*l*.

Section 15(d) of the Securities Exchange Act of 1934 is codified as 15 USCS 78o(d).

RESEARCH REFERENCES

ALR. Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting validity or enforceability of contract. 29 A.L.R.4th 884.

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

§ 75-67-329. Confiscation of pledged or purchased goods.

(1) No pledged or purchased goods can be confiscated without specifically accomplishing the following actions:

(a) A police report being made in a timely manner;

(b) A warrant sworn out for the person who pledged or sold the goods to the pawnbroker; and

(c) A theft report, or a National Crime Information Center (NCIC) report, identifying the merchandise to be confiscated along with a request for restitution, pursuant to law.

(2) Pledged or purchased goods can be put on a one-time seven (7) day hold by the authorized law enforcement authorities.

(3) Confiscated merchandise shall be returned to the pawnbroker by the law enforcement authorities as soon as possible when determined that the merchandise has no rightful owner.

SOURCES: Laws, 1993, ch. 598, § 15, eff from and after July 1, 1993.

ATTORNEY GENERAL OPINIONS

Police department can confiscate stolen property from pawnbroker. Hammack Oct. 13, 1993, A.G. Op. #93-0657.

Limitations contained in Section 75-67-329 must be followed by enforcement authorities to confiscate stolen property from pawn shop without court process or order. Pacific, Jan. 20, 1994, A.G. Op. #93-0839.

The requirement that a police report be made in a timely manner before pledged or purchased goods can be confiscated from a pawnshop does not dictate a specific time period in which the police report must be filed; the facts of each case will determine whether a report has been filed in a timely manner. Howard, March 31, 2000, A.G. Op. #2000-0150.

RESEARCH REFERENCES

ALR. Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting validity or enforceability of contract. 29 A.L.R.4th 884.

Seizure of books, documents or other papers under search warrant not describing such items. 54 A.L.R.4th 391.

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

§ 75-67-331. Penalty for failure to secure a license.

Any person who engages in the business of operating a pawnshop without first securing a license prescribed by this article shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not in excess of One Thousand Dollars ($1,000.00) or by confinement in the county jail for not more than one (1) year, or both.

SOURCES: Laws, 1993, ch. 598, § 16, eff from and after July 1, 1993.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting validity or enforceability of contract. 29 A.L.R.4th 884.

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

§ 75-67-333. Additional civil and criminal penalties for violations of this article; injunctions.

(1) In addition to any other penalty which may be applicable, any licensee or employee who willfully violates any provision of this article, or who willfully makes a false entry in any record specifically required by this article, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not in excess of One Thousand Dollars ($1,000.00) per violation or false entry.

(2)(a) In addition to any other penalty which may be applicable, any licensee or employee who fails to make a record of a pawnshop transaction and subsequently sells or disposes of the pledged goods from such transaction shall be punished as follows:

(i) For a first offense, the licensee or employee shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not in excess of One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than one (1) year, or both fine and imprisonment;

(ii) For a second offense, the licensee or employee shall be guilty of a felony and upon conviction thereof, shall be punishable by a fine not in excess of Five Thousand Dollars ($5,000.00) or by imprisonment in the custody of the State Department of Corrections for a term not less than one (1) year nor more than five (5) years, or by both fine and imprisonment.

(b) Any licensee convicted in the manner provided in this subsection (2) shall forfeit the surety bond or deposit required in Section 75-67-323 and the amount of such bond or deposit shall be credited to the budget of the state or local agency, which directly participated in the prosecution of such licensee, for the specific purpose of increasing law enforcement resources for that specific state or local agency. Such bond or deposit shall be used to augment existing state and local law enforcement budgets and not to supplant them.

(3) Compliance with the criminal provisions of this article shall be enforced by the appropriate law enforcement agency who may exercise for such purpose any authority conferred upon such agency by law.

(4) When the commissioner has reasonable cause to believe that a person is violating any provision of this article, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this article, may enter an order requiring the person to stop or to refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

(5) The commissioner may, after notice and a hearing, impose a civil penalty against any licensee adjudged by the commissioner to be in violation of the provisions of this article. Such civil penalty shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the State General Fund.

SOURCES: Laws, 1993, ch. 598, § 17; Laws, 2001, ch. 503, § 4, eff from and after passage (approved Mar. 24, 2001.)

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Usury: liability for the statutory penalty of persons other than the offending lender in a usurious loan transaction. 4 A.L.R.3d 650.

§ 75-67-334. Authority of commissioner to examine persons suspected of violating licensure requirements.

The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business that requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this article, including without limitation the conduct of business without a license as required under this article.

SOURCES: Laws, 2001, ch. 503, § 6, eff from and after passage (approved Mar. 24, 2001.)

§ 75-67-335. Liability of rightful owner to pawnbroker where pledged goods are found to be stolen; restitution awarded upon successful prosecution.

If any pledged goods from a pawn transaction are found to be stolen goods and are returned to the rightful owner by law enforcement authorities and if the licensee who accepted such pledged goods has complied with all of the duties and responsibilities as specified in this article during such transaction, then the rightful owner of such pledged goods shall be liable to the licensee for the pledged amount if the rightful owner fails to prosecute or cooperate in the criminal prosecution related to such pawn transaction, provided that the rightful owner can prove that the stolen goods are his. It shall also be the responsibility of the licensee to assist or cooperate in the criminal prosecution related to such pawn transaction. Upon successful criminal prosecution, restitution shall be awarded to the pawnbroker and the rightful owner, if applicable, by the criminal court at the time of the defendant's sentencing. If the identity of a person who pawned stolen goods can be determined, the district attorney may prosecute such person for any applicable criminal violations.

SOURCES: Laws, 1993, ch. 598, § 18; Laws, 1997, ch. 610, § 1; Laws, 2001, ch. 503, § 10, eff from and after passage (approved Mar. 24, 2001.)

Cross References — Mississippi Title Pledge Act, see § 75-67-401 et seq.

ATTORNEY GENERAL OPINIONS

Police department can confiscate stolen property from a pawnbroker. Hammack Oct. 13, 1993, A.G. Op. #93-0657.

§ 75-67-337. Severability provision.

The provisions of this article are severable. If any part of this article is declared invalid or unconstitutional, such declaration shall not affect the parts which remain.

SOURCES: Laws, 1993, ch. 598, § 19, eff from and after July 1, 1993.

§ 75-67-339. Time limit for existing pawnbrokers to apply for license and pay fee.

Pawnbrokers operating pawnshop locations in business as of July 1, 1993, shall have until January 1, 1994, to apply for a license under this article and to pay the required fee, and upon such application and payment of such required fee, shall be granted a license under this article.

SOURCES: Laws, 1993, ch. 598, § 20, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR. Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting validity or enforceability of contract. 29 A.L.R.4th 884.

§ 75-67-341. Authority of Commissioner of Banking to develop forms; commissioner may examine records without notice.

(1) The Commissioner of Banking shall develop and provide any necessary forms to carry out the provisions of this article.

(2) To assure compliance with the provisions of this article, the commissioner may examine the pawn books and records of any licensee without notice during normal business hours.

Any expenses incurred for such examinations are included in the licensee's application fee; however, the commissioner may charge the licensee any actual expenses incurred while examining the licensee's pawn records or books which are located outside of the State of Mississippi.

SOURCES: Laws, 1993, ch. 598, § 21; Laws, 2001, ch. 503, § 5, eff from and after passage (approved Mar. 24, 2001.)

RESEARCH REFERENCES

Am Jur. 12B Am. Jur. Legal Forms 2d, Moneylenders and Pawnbrokers § 177:1 et seq.

§ 75-67-343. Authority of municipalities to enact ordinances complying with, but not more restrictive than, provision of this article.

Municipalities in this state may enact ordinances which are in compliance with, but not more restrictive than, the provisions of this article. Any existing or future order, ordinance or regulation which conflicts with this provision shall be null and void.

SOURCES: Laws, 1993, ch. 598, § 22, eff from and after July 1, 1993.

ATTORNEY GENERAL OPINIONS

This section specifically prohibits a municipality from enacting an ordinance that is more restrictive than the provisions of the Mississippi Pawnshop Act. Houston, October 18, 1995, A.G. Op. #95-0704.

The statute only applies to municipalities, and there is no similar provision for counties to enact ordinances concerning the regulation of pawnshops; thus, the legislature has preempted the area of law regarding the regulation of pawnshops except as provided for by the statute, and a county may not enact an ordinance regulating pawnshops within the county. Adams, Jan. 14, 2000, A.G. Op. #99-0699.

ARTICLE 9.

TITLE PLEDGE ACT.

SEC.

75-67-401. Title.
75-67-403. Definitions [Repealed effective July 1, 2018].
75-67-405. Title pledge transaction form.
75-67-407. Information to be included on title pledge transaction forms.
75-67-409. Verification statement; record of transactions of pledged property.
75-67-411. Right to redeem pledged property; failure to redeem.
75-67-413. Title pledge service charge; extension of title pledge transaction period; additional payments on same pledged property to be evidenced by separate title pledge agreement.
75-67-415. Prohibited actions of title pledge lender.
75-67-417. Presentation of title pledge transaction form; lost, destroyed, or stolen forms.
75-67-419. License requirements for title pledge lender; annual fees; temporary license.
75-67-421. Eligibility requirements for title pledge lender license.
75-67-423. Grounds for suspension of license; notice and hearing requirements.
75-67-425. Oath required for new or transferred license; application; contents of application.
75-67-427. Prerequisites to confiscating pledged property.
75-67-429. Penalties for operating title pledge office without a license.

75-67-431. Penalties for violation of chapter.
75-67-433. Stolen pledged property.
75-67-435. Administration of chapter; examination of books and records.
75-67-437. Time period for application for license.
75-67-439. Complying or conflicting municipal ordinance.
75-67-441. Severability.
75-67-443. Hiring of employees.
75-67-445. Advertising, displaying, or publishing false or misleading statements prohibited.
75-67-447. Commissioner authorized to examine persons suspected of conducting business requiring a license.
75-67-449. Liability of licensees.

§ 75-67-401. Title.

This article shall be known and may be cited as the "Mississippi Title Pledge Act."

SOURCES: Laws, 1997, ch. 610, § 2, eff from and after passage (approved April 22, 1997).

RESEARCH REFERENCES

Am Jur. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers § 1 et seq.

Practice References. Commercial Finance Guide (Matthew Bender).

Commercial Loan Documentation Guide (Matthew Bender).

Consumer Credit Law Manual (Matthew Bender).

Kenneth M. Lapine, Consumer Credit: Laws, Transactions and Forms (Matthew Bender).

§ 75-67-403. Definitions [Repealed effective July 1, 2018].

The following words and phrases shall have the following meanings:

(a) "Appropriate law enforcement agency" means the sheriff of each county in which the title pledge lender maintains an office, or the police chief of the municipality or law enforcement officers of the Department of Public Safety in which the title pledge lender maintains an office.

(b) "Attorney General" means the Attorney General of the State of Mississippi.

(c) "Commissioner" means the Commissioner of Banking and Consumer Finance of the State of Mississippi, or his designee, as the designated official for the purpose of enforcing this article.

(d) "Identification" means a government issued photographic identification.

(e) "Person" means an individual, partnership, corporation, joint venture, trust, association or other legal entity.

(f) "Pledged property" means any personal property certificate of title that is deposited with a title pledge lender in the course of the title pledge lender's business and is the subject of a title pledge agreement.

(g) "Pledgor" means the person to whom the property is titled.

(h) "Title pledge agreement" means a thirty-day written agreement whereby a title pledge lender agrees to make a loan of money to a pledgor, and the pledgor agrees to give the title pledge lender a security interest in unencumbered titled personal property owned by the pledgor. The pledgor shall agree that the title pledge lender keep possession of the certificate of title. The pledgor shall have the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title pledge agreement. When the certificate of title is redeemed, the title pledge lender shall release the security interest in the titled personal property and return the personal property certificate of title to the pledgor. The title pledge agreement shall provide that upon failure by the pledgor to redeem the certificate of title at the end of the original thirty-day agreement period, or at the end of any extension(s) thereof, the title pledge lender shall be allowed to take possession of the titled personal property. The title pledge agreement shall contain a power of attorney which authorizes the title pledge lender to transfer title to the pledged property from the pledgor to the title pledge lender upon failure to redeem the pledged property on or before the maturity date of the title pledge agreement, or any extension thereof. The title pledge lender shall take physical possession of the certificate of title for the entire length of the title pledge agreement, but shall not be required to take physical possession of the titled personal property at any time. A title pledge lender may only take unencumbered certificates of title for pledge, but may encumber the title as part of the title pledge transaction by perfecting its security interest in the titled property.

(i) "Title pledge lender" means any person engaged in the business of making title pledge agreements with pledgors; provided, however, that the following are exempt from the definition of "title pledge lender" and from the provisions of this article: any bank which is regulated by the Department of Banking and Consumer Finance, the Comptroller of the Currency of the United States, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System or any other federal or state authority and all affiliates of such bank, and additionally any bank or savings and loan association whose deposits or accounts are eligible for insurance by the Bank Insurance Fund or the Savings Association Insurance Fund or other fund administered by the Federal Deposit Insurance Corporation or any successor thereto, and all affiliates of such banks and savings and loan associations, any state or federally chartered credit union and finance company subject to licensing and regulation by the Department of Banking and Consumer Finance.

(j) "Title pledge office" means the location at which, or premises in which, a title pledge lender regularly conducts business.

(k) "Title pledge service charge" means a charge for investigating the title, appraising the titled personal property to which the pledged property relates, documenting and closing the title pledge agreement transaction, making required reports to appropriate law enforcement officials, and for all of the services provided by the title pledge lender.

(*l*) "Title pledge transaction form" means the instrument on which a title pledge lender records title pledge agreements pursuant to this article.

(m) "Titled personal property" means any personal property the ownership of which is evidenced and delineated by a state-issued certificate of title.

(n) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

SOURCES: Laws, 1997, ch. 610, § 3; Laws, 2000, ch. 621, § 20; Laws, 2016, ch. 500, § 20, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:

"SECTION 22. This act shall stand repealed on July 1, 2018."

Amendment Notes — The 2016 amendment deleted the last sentence of (j), which read: "No business other than title pledge business shall be conducted at a title pledge office."

§ 75-67-405. Title pledge transaction form.

At the time the title pledge lender enters into each title pledge agreement, the title pledge lender shall complete a consecutively numbered title pledge transaction form for such transaction, and the pledgor shall sign the completed form. The commissioner shall approve the design and format of the title pledge transaction form, which shall elicit the information required under this section. In completing the title pledge transaction form, the title pledge lender shall record the following information, which shall be typed or written indelibly and legibly in English:

(a) The make, model and year of the titled personal property to which the pledged property relates.

(b) The vehicle identification number, or other comparable identification number, along with the license plate number, if applicable, of the titled personal property to which the pledged property relates.

(c) The name, address, date of birth, physical description, Social Security number of the pledgor and one (1) photo identification.

(d) The date of the transaction.

(e) The identification number and the type of identification (including the issuing agency) accepted from the pledgor.

(f) The amount of money advanced, which shall be designated as the "amount financed."

(g) The maturity date of the title pledge agreement, which shall be thirty (30) days after the date of the transaction.

(h) The total title pledge service charge payable on the maturity date, designated as the "finance charge."

(i) The total amount (amount financed plus finance charge) which must be paid to redeem the pledged property on the maturity date, designated as the "total of payments."

(j) The annual percentage rate, computed in accordance with the regulations adopted by the Federal Reserve Board pursuant to the Federal Truth in Lending Act.

SOURCES: Laws, 1997, ch. 610, § 4, eff from and after passage (approved April 22, 1997).

Federal Aspects — The Federal Truth in Lending Act is codified at 15 USCS § 1601 et seq.

§ 75-67-407. Information to be included on title pledge transaction forms.

(1) The following information shall also be printed on all title pledge transaction forms:

(a) The name and address of the title pledge office.

(b) The statement that:

(i) The pledgor is not obligated to redeem the pledged certificate of title;

(ii) If the pledgor does not redeem the pledged certificate of title on or before the maturity date of the title pledge agreement, the title pledge lender may take possession of the titled personal property to which the certificate of title relates;

(iii) If the pledgor does not redeem the pledged property within thirty (30) days of the maturity date by paying all outstanding principal, interest and other fees, then the pledgor forfeits all right, title and interest in and to the titled personal property and the pledged property to the title pledge lender, who shall thereby acquire an absolute right of title and ownership to the titled personal property; and

(iv) If this title pledge transaction form is lost, destroyed or stolen, the pledgor shall immediately advise the issuing title pledge lender.

(c) The statement that "The pledgor represents and warrants that the titled personal property to which the pledged property relates is not stolen, it has no liens or encumbrances against it, and the pledgor has the right to enter into this transaction."

(d) Immediately above the signature of the pledgor or seller, the statement that "I, the pledgor declare under penalty of perjury that I have read the foregoing document and that, to the best of my knowledge and belief, the facts contained in it are true and correct."

(e) A blank line for the signature of the pledgor.

(2) At the time of the transaction, the title pledge lender shall deliver to the pledgor a copy of the completed title pledge transaction form.

SOURCES: Laws, 1997, ch. 610, § 5, eff from and after passage (approved April 22, 1997).

§ 75-67-409. Verification statement; record of transactions of pledged property.

(1) The pledgor shall sign a statement verifying that the pledgor is the rightful owner of the pledged property and is entitled to pledge it. The pledgor shall receive an exact copy of the title pledge agreement which shall be signed by the title pledge lender or any employee of the title pledge lender.

(2) The title pledge lender shall maintain a record of all transactions of pledged property on the premises for a period of two (2) years. A title pledge lender upon request shall provide to the appropriate law enforcement agency a complete record of all transactions. These records shall be a correct copy of the entries made of the title pledge transaction, except as to the amount of cash advanced for the pledged property and the monthly title pledge charge.

(3) The title pledge lender shall maintain records that contain a complete payment history of each customer evidencing all principal payments, service charge and/or other charges. Those records also shall reflect any unpaid principal balance as well as a payoff balance that includes the accrued service charges.

SOURCES: Laws, 1997, ch. 610, § 6; Laws, 2000, ch. 621, § 21, eff from and after passage (approved May 23, 2000.)

§ 75-67-411. Right to redeem pledged property; failure to redeem.

(1) A pledgor shall have no obligation to redeem pledged property or make any payment on a title pledge transaction. Upon the pledgor's failure to redeem the pledged property on or before the maturity date of the title pledge agreement or any extension or continuation thereof, the title pledge lender has the right to take possession of the titled personal property and to exercise a power of attorney to transfer title to the pledged property. In taking possession, the title pledge lender or his agent may proceed without judicial process if this can be done without breach of the peace; or, if necessary, may proceed by action to obtain judicial process.

(2) If, within thirty (30) days after the maturity date, the pledgor redeems the pledged property by paying all outstanding principal, interest and other customary fees, the pledgor shall be given possession of the titled personal property and the pledged property without further charge.

(3) If the pledgor fails to redeem the pledged property during the thirty-day period provided in subsection (2) of this section, then the pledgor shall thereby forfeit all right, title and interest in and to the titled personal property and the pledged property to the title pledge lender who shall thereby acquire an absolute right of title and ownership to the titled personal property. The title pledge lender shall then have the sole right and authority to sell or dispose of the titled personal property.

(4) Notwithstanding anything in the preceding subsections of this section, the pledgor shall have three (3) business days after the title pledge lender has

taken possession of the titled personal property to redeem the property by paying the amount of the unpaid principal balance, the delinquent service charge and the actual cost of the repossession. The cost of repossession shall include towing charges, storage charges paid to a third party and repairs made to the property to render it operable.

(5) If the property is sold after the three-business-day period, the title pledge lender shall return to the pledgor eighty-five percent (85%) of the amount received from the sale above the amount of the unpaid principal balance, the delinquent service charge, the actual cost of the repossession and a sales fee of One Hundred Dollars ($100.00). However, any titled personal property that is deemed to be salvage by the title pledge lender may be sold or otherwise disposed of immediately upon repossession.

(6) The title pledge transaction form shall contain a provision written in boldface type of at least fourteen (14) point size that notifies the pledgor that the titled personal property is subject to sale at any time after the three-business-day period has expired, unless the property is deemed to be salvage by the title pledge lender, in which case the property may be sold or otherwise disposed of immediately. The transaction form shall have a space located near that provision that the pledgor must initial.

SOURCES: Laws, 1997, ch. 610, § 7; Laws, 2000, ch. 621, § 22, eff from and after passage (approved May 23, 2000.)

§ 75-67-413. Title pledge service charge; extension of title pledge transaction period; additional payments on same pledged property to be evidenced by separate title pledge agreement.

(1) A title pledge lender may contract for and receive a title pledge service charge in lieu of interest or other charges for all services, expenses, cost and losses of every nature not to exceed twenty-five percent (25%) of the principal amount, per month, advanced in the title pledge transaction.

(2) Any interest, charge or fees contracted for or received, directly or indirectly, in excess of the amount permitted under subsection (1) of this section shall be uncollectible and the title pledge transaction shall be void. The title pledge service charge allowed under subsection (1) of this section shall be deemed earned, due and owing as of the date of the title pledge transaction and a like sum shall be deemed earned, due and owing on the thirty-first day from the date of the transaction and on every thirtieth day thereafter.

(3) By agreement of the parties, the maturity date of the title pledge transaction may be extended or continued for thirty-day periods, provided that the service charges as specified in subsection (1) are not exceeded for any extensions. All extensions or continuations of the title pledge transaction shall be evidenced in writing. No accrued interest or service charge shall be capitalized or added to the original principal of the title pledge transaction during any extension or continuation. Beginning with the first extension or continuation and at each successive extension or continuation thereafter, the

pledgor shall be required to reduce the principal amount financed by at least ten percent (10%) of the original principal amount of the title pledge transaction. Notwithstanding any provision in this article to the contrary, if the pledgor fails to pay at least ten percent (10%) of the original principal amount at any such extension or continuation, the title pledge lender may, at its option, either (a) declare the outstanding principal and any service charges to be immediately due and payable, or (b) allow the transaction to be extended or continued, provided that the title pledge lender shall reduce the principal amount of the loan by ten percent (10%) of the original principal amount solely for the purposes of calculating its service charge. This reduction in principal shall continue to be owing by the pledgor in accordance with the title pledge transaction, but that amount shall not be entitled to accrue interest or service charges thereafter.

(4) Any additional payment of funds on the same pledged property must be evidenced by a separate title pledge agreement. A title pledge lender shall not advance funds to a pledgor to pay off an existing title pledge agreement.

SOURCES: Laws, 1997, ch. 610, § 8; Laws, 2000, ch. 621, § 23, eff from and after passage (approved May 23, 2000.)

§ 75-67-415. Prohibited actions of title pledge lender.

A title pledge lender, or any agent or employee of such title pledge lender, shall not:

(a) Falsify or intentionally fail to make an entry of any material matter in a title pledge lender transaction form.

(b) Refuse to allow the commissioner, the appropriate law enforcement official, state attorney, or any of their designated representatives having appropriate jurisdiction, to inspect completed title pledge transaction forms or pledged property during the ordinary hours of the title pledge lender's business or other times acceptable to both parties.

(c) Enter into a title pledge agreement with a person under the age of eighteen (18) years.

(d) Make any agreement requiring or allowing the personal liability of a pledgor or the waiver of any of the provisions of this article.

(e) Knowingly enter into a title pledge agreement with any person who is under the influence of drugs or alcohol when such condition is visible or apparent, or with any person using a name other than his own name or the registered name of his business.

(f) Enter into a title pledge agreement in which the amount of money loaned in consideration of the pledge of any single certificate of title exceeds Two Thousand Five Hundred Dollars ($2,500.00).

(g) Fail to exercise reasonable care in the safekeeping of pledged property or of titled personal property repossessed pursuant to this article.

(h) Fail to return pledged property or repossessed titled personal property to a pledgor, with any and all of the title pledge lender's liens on the property properly released, upon payment of the full amount due the title pledge lender, unless the property has been seized or impounded by an authorized law enforcement agency, taken into custody by a court, or otherwise disposed of by court order.

(i) Sell or otherwise charge for insurance in connection with a title pledge agreement.

SOURCES: Laws, 1997, ch. 610, § 9, eff from and after passage (approved April 22, 1997).

§ 75-67-417. Presentation of title pledge transaction form; lost, destroyed, or stolen forms.

(1) Any person presenting identification of himself and presenting the pledgor's copy of the title pledge transaction form to the title pledge lender is presumed to be entitled to redeem the pledged property described in the title pledge lender transaction form; provided, however, that if the title pledge lender determines that the person is not the original pledgor, the title pledge lender is not required to allow the redemption of the pledged property by such person. The person redeeming the pledged property must sign the pledgor's copy of the title pledge transaction form, which the title pledge lender may retain to evidence such person's receipt of the pledged property. If the person redeeming the pledged property is not the original pledgor, that person must show identification to the title pledge lender, and the title pledge lender shall record the person's name and address on the title pledge transaction form retained by the title pledge lender. The title pledge lender shall not be liable to the original pledgor for having allowed the redemption of the pledged property by another person pursuant to this subsection (1).

(2) If the pledgor's copy of the title pledge transaction form is lost, destroyed or stolen, the pledgor must notify the title pledge lender in writing by certified or registered mail, return receipt requested, or in person evidenced by a signed receipt, and receipt of this notice shall invalidate such title pledge transaction form if the pledged property has not previously been redeemed. Before delivering the pledged property or issuing a new title pledge transaction form, the title pledge lender shall require the pledgor to make a written statement of the loss, destruction or theft of the pledgor's copy of the title pledge transaction form. The title pledge lender shall record on the written statement the type of identification and the identification number accepted from the pledgor, the date the statement is given and the number of the title pledge transaction form lost, destroyed or stolen. The statement shall be signed by the title pledge lender or the title pledge office employee who accepts the statement from the pledgor. A title pledge lender is entitled to a fee not to exceed Five Dollars ($5.00) in connection with each such lost, destroyed or stolen title pledge transaction form and the taking of a properly prepared written statement.

(3) No sales tax shall be deemed due or collectible in connection with the redemption of pledged property under this article.

SOURCES: Laws, 1997, ch. 610, § 10, eff from and after passage (approved April 22, 1997).

§ 75-67-419. License requirements for title pledge lender; annual fees; temporary license.

(1) A person may not engage in business as a title pledge lender or otherwise portray himself as a title pledge lender unless the person has a valid license authorizing engagement in the business. A separate license is required for each place of business under this article. The commissioner may issue more than one (1) license to a person if that person complies with this article for each license. A new license or application to transfer an existing license is required upon a change, directly or beneficially, in the ownership of any licensed title pledge office and an application shall be made to the commissioner in accordance with this article.

(2) When a licensee wishes to move a title pledge office to another location, the licensee shall give thirty (30) days prior written notice to the commissioner who shall amend the license accordingly.

(3) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay the commissioner at the time of making the application a license fee of Seven Hundred Fifty Dollars ($750.00), and on or before June 1 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00). If the annual fee remains unpaid thirty (30) days after June 1, the license shall thereupon expire, but not before June 30 of any year for which the annual fee has been paid. If any person engages in business as provided for in this article without paying the license fee provided for in this article before commencing business or before the expiration of such person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in the business without a license or after the expiration of a license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) Notwithstanding other provisions of this article, the commissioner may issue a temporary license authorizing the operation of a title pledge office on the receipt of an application to transfer a license from one person to another or on the receipt of an application for a license involving principals and owners that are substantially identical to those of an existing licensed title pledge office. The temporary license is effective until the permanent license is issued or denied.

(5) Notwithstanding other provisions of this article, neither a new license nor an application to transfer an existing license shall be required upon any change, directly or beneficially, in the ownership of any licensed title pledge office incorporated under the laws of this state or any other state so long as the licensee continues to operate as a corporation doing a title pledge business under the license. The commissioner may, however, require the licensee to

provide such information as he deems reasonable and appropriate concerning the officer and directors of the corporation and persons owning in excess of twenty-five percent (25%) of the outstanding shares of the corporation.

SOURCES: Laws, 1997, ch. 610, § 11; Laws, 2000, ch. 621, § 24, eff from and after passage (approved May 23, 2000.)

§ 75-67-421. Eligibility requirements for title pledge lender license.

(1) To be eligible for a title pledge lender license, an applicant shall:

(a) Operate lawfully and fairly within the purposes of this article;

(b) Not have been convicted of a felony in the last ten (10) years or be active as a beneficial owner for someone who has been convicted of a felony in the last ten (10) years;

(c) File with the commissioner a bond with good security in the penal sum of Fifty Thousand Dollars ($50,000.00) for each location at which the applicant proposes to engage in the business of title pledge lending, but in no event shall the aggregate amount of the bond for all locations per applicant exceed Two Hundred Fifty Thousand Dollars ($250,000.00) and no more than Fifty Thousand Dollars ($50,000.00) shall be payable or recoverable on the bond for each location; the bond shall be payable to the State of Mississippi for the faithful performance by the licensee of the duties and obligations pertaining to the business so licensed and the prompt payment of any judgment which may be recovered against the licensee on account of damages or other claim arising directly or collaterally from any violation of the provisions of this article; the bond shall not be valid until it is approved by the commissioner; the applicant may file, in lieu thereof, cash, a certificate of deposit, or government bonds in the amount of Twenty-five Thousand Dollars ($25,000.00) for each location at which the applicant proposes to engage in the business of title pledge lending, but in no event shall the aggregate amount of the cash, certificate of deposit or government bonds for all locations per applicant exceed Two Hundred Fifty Thousand Dollars ($250,000.00) and no more than Twenty-five Thousand Dollars ($25,000.00) shall be payable or recoverable on the cash, certificate of deposit or government bonds for each location; the deposit of the cash, certificate of deposit or government bonds shall be filed with the commissioner and is subject to the same terms and conditions as are provided for in the surety bond required herein; any interest or earnings on such deposits are payable to the depositor.

(d) File with the commissioner an application accompanied by a set of fingerprints from any local law enforcement agency, and the initial license fee required in this article. In order to determine the applicant's suitability for license, the commissioner shall forward the fingerprints to the Department of Public Safety; and if no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(2) Upon the filing of an application in a form prescribed by the commissioner, accompanied by the fee and documents required in this article, the department shall investigate to ascertain whether the qualifications prescribed by this article have been satisfied. If the commissioner finds that the qualifications have been satisfied and, if he approves the documents so filed by the applicant, he shall issue to the applicant a license to engage in the business of title pledge lending in this state.

(3) Complete and file with the commissioner an annual renewal application accompanied by the renewal fee required in this article.

(4) The license shall be kept conspicuously posted in the place of business of the licensee.

SOURCES: Laws, 1997, ch. 610, § 12; Laws, 2000, ch. 621, § 25; Laws, 2003, ch. 339, § 1; Laws, 2005, ch. 430, § 1, eff from and after passage (approved Mar. 21, 2005.)

§ 75-67-423. Grounds for suspension of license; notice and hearing requirements.

(1) The commissioner may, after notice and hearing, suspend or revoke any license if it finds that:

(a) The licensee, either knowingly, or without the exercise of due care to prevent the same, has violated any provision of this article;

(b) Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner in refusing the license;

(c) The licensee has aided, abetted or conspired with an individual or person to circumvent or violate the requirements of this article;

(d) The licensee, or a legal or beneficial owner of the license, has been convicted of a crime that the commissioner finds directly relates to the duties and responsibilities of the occupation of title pledge lender.

(2) The commissioner may conditionally license or place on probation a person whose license has been suspended or may reprimand a licensee for a violation of this article.

(3) The manner of giving notice and conducting a hearing as required by subsection (1) of this section shall be performed in accordance with Mississippi Administrative Procedures Law, Section 25-43-1.101 et seq., Mississippi Code of 1972.

(4) Any licensee may surrender any license by delivering it to the commissioner with written notice of its surrender, but such surrender shall not affect the licensee's civil or criminal liability for acts committed prior thereto.

(5) No revocation, suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any pledgor. Any title pledge transaction made without benefit of license is void.

(6) The commissioner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or

condition then exists that clearly would have justified the commissioner in refusing originally to issue a license under this article.

(7) The appropriate local law enforcement agency shall be notified of any licensee who has his license suspended or revoked as provided by this article.

(8) The Commissioner of Banking and Consumer Finance shall enforce the provisions of this section.

SOURCES: Laws, 1997, ch. 610, § 13, eff from and after passage (approved April 22, 1997).

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq., referred to in subsection (3) of this section, shall be deemed to mean and refer to Section 25-43-1.101 et seq.

§ 75-67-425. Oath required for new or transferred license; application; contents of application.

(1) An application for a new title pledge office license, the transfer of an existing title pledge office license or the approval of a change in the ownership of a licensed title pledge office shall be under oath and shall state the full name and place of residence of the applicant, the place where the business is to be conducted and other relevant information required by the commissioner. If the applicant is a partnership, the application shall state the full name of each partner. If the applicant is a corporation, the application shall state the full name and address of each officer, shareholder and director.

(2) Notwithstanding the provisions of this section, the application need not state the full name and address of each shareholder, if the applicant is owned directly or beneficially by a person which as an issuer has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 or is an issuer of securities which is required to file reports with the Securities and Exchange Commission pursuant to Section 15(d) of the Securities Exchange Act, provided that such person files with the commissioner such information, documents and reports as are required by the provision of the Securities Exchange Act to be filed by such issuer with the Securities and Exchange Commission.

SOURCES: Laws, 1997, ch. 610, § 14, eff from and after passage (approved April 22, 1997).

Federal Aspects — Section 12 of the Securities Exchange Act of 1934 is codified as 15 USCS § 78*l*.

Section 15(d) of the Securities Exchange Act of 1934 is codified as 15 USCS § 78o(d).

§ 75-67-427. Prerequisites to confiscating pledged property.

(1) No pledged property can be confiscated without the following actions having been accomplished:

(a) A police report being made in a timely manner;

(b) A warrant sworn out for the person who pledged the property to the title pledge lender; and

(c) A theft report or a National Crime Information Center (NCIC) report identifying the pledged property to be confiscated along with a request for restitution, pursuant to law.

(2) Pledged property can be put on a one-time seven-day hold by the authorized law enforcement authorities.

(3) Confiscated pledged property shall be returned to the title pledge lender by the law enforcement authorities as soon as possible when determined that the pledged property has no rightful owner.

SOURCES: Laws, 1997, ch. 610, § 15, eff from and after passage (approved April 22, 1997).

§ 75-67-429. Penalties for operating title pledge office without a license.

Any person who engages in the business of operating a title pledge office without first securing a license prescribed by this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine not in excess of One Thousand Dollars ($1,000.00) or by confinement in the county jail for not more than one (1) year, or both.

SOURCES: Laws, 1997, ch. 610, § 16, eff from and after passage (approved April 22, 1997).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-67-431. Penalties for violation of chapter.

(1) In addition to any other penalty which may be applicable, any licensee or employee who willfully violates any provision of this article, or who willfully makes a false entry in any record specifically required by this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine not in excess of One Thousand Dollars ($1,000.00) per violation or false entry.

(2)(a) In addition to any other penalty which may be applicable, any licensee or employee who fails to make a record of a title pledge transaction and subsequently sells or disposes of the pledged property from such transaction shall be punished as follows:

(i) For a first offense, the licensee or employee shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not in excess of One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than one (1) year, or both fine and imprisonment;

(ii) For a second offense, the licensee or employee shall be guilty of a felony and, upon conviction thereof, shall be punishable by a fine not in excess of Five Thousand Dollars ($5,000.00) or by imprisonment in the custody of the State Department of Corrections for a term not less than one (1) year nor more than five (5) years, or by both fine and imprisonment.

(b) Any licensee convicted in the manner provided in this subsection (2) shall forfeit the surety bond or deposit required in Section 75-67-421 and the amount of the bond or deposit shall be credited to the budget of the state or local agency, which directly participated in the prosecution of the licensee, for the specific purpose of increasing law enforcement resources for that specific state or local agency. Any proceeds of a forfeited bond or deposit shall be used to augment existing state and local law enforcement budgets and not to supplant them.

(3) Compliance with the criminal provisions of this article shall be enforced by the appropriate law enforcement agency who may exercise for that purpose any authority conferred upon the agency by law.

(4) When the commissioner has reasonable cause to believe that a person is violating any provision of this article, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this article, may enter an order requiring the person to stop or to refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

(5) The commissioner may, after notice and hearing, impose a civil penalty against any licensee if the licensee or employee is adjudged by the commissioner to be in violation of the provisions of this article. Such civil penalty shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the Department of Banking Special Fund.

SOURCES: Laws, 1997, ch. 610, § 17, eff from and after passage (approved April 22, 1997).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-67-433. Stolen pledged property.

If any pledged property from a title pledge transaction is found to be stolen and is returned to the rightful owner by law enforcement authorities and if the licensee who accepted such pledged property has complied with all of the duties and responsibilities as specified in this article during such transaction, then the rightful owner of such pledged property shall be liable to the licensee for the pledged amount if the rightful owner fails to prosecute or cooperate in the criminal prosecution related to such title loan transaction, provided that the rightful owner can prove that the stolen goods are his. It shall also be the responsibility of the licensee to assist or cooperate in the criminal prosecution related to such title pledge transaction. If the identity of a person who pawned stolen goods can be determined, the district attorney may prosecute such person for any applicable criminal violations.

SOURCES: Laws, 1997, ch. 610, § 18, eff from and after passage (approved April 22, 1997).

§ 75-67-435. Administration of chapter; examination of books and records.

(1) The Commissioner of Banking and Consumer Finance shall develop and provide any necessary forms to carry out the provisions of this article.

(2) The department may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this article.

(3) To assure compliance with the provisions of this article, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner may charge the licensee an examination fee in an amount not less than Three Hundred Dollars ($300.00) nor more than Six Hundred Dollars ($600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

SOURCES: Laws, 1997, ch. 610, § 19; Laws, 2000, ch. 621, § 26; Laws, 2003, ch. 339, § 2; Laws, 2007, ch. 397, § 2, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3) by substituting "To assure compliance with the provisions of this article" for "To assure compliance with the provision of this article." The Joint Committee ratified the correction at its July 22, 2010, meeting.

§ 75-67-437. Time period for application for license.

Title pledge lenders in operation as of April 22, 1997, shall have until July 1, 1997, to apply for a license under this article.

SOURCES: Laws, 1997, ch. 610, § 20, eff from and after passage (approved April 22, 1997).

§ 75-67-439. Complying or conflicting municipal ordinance.

Municipalities in this state may enact ordinances which are in compliance with, but not more restrictive than, the provisions of this article. Any existing or future order, ordinance or regulation which conflicts with this provision shall be null and void.

SOURCES: Laws, 1997, ch. 610, § 21, eff from and after passage (approved April 22, 1997).

§ 75-67-441. Severability.

The provisions of this article are severable. If any part of this article is declared invalid or unconstitutional, such declaration shall not affect the parts which remain.

SOURCES: Laws, 1997, ch. 610, § 22, eff from and after passage (approved April 22, 1997).

§ 75-67-443. Hiring of employees.

The commissioner may employ additional necessary permanent full-time employees above the number of permanent full-time employees authorized for the department for fiscal year 1997 to carry out and enforce the provisions of this article.

SOURCES: Laws, 1997, ch. 610, § 23, eff from and after passage (approved April 22, 1997).

§ 75-67-445. Advertising, displaying, or publishing false or misleading statements prohibited.

A licensee shall not advertise, display or publish, or permit to be advertised, displayed or published, in any manner whatsoever, any statement or representation that is false, misleading or deceptive.

SOURCES: Laws, 2000, ch. 621, § 27, eff from and after passage (approved May 23, 2000.)

§ 75-67-447. Commissioner authorized to examine persons suspected of conducting business requiring a license.

The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business that requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this article, including without limitation the conduct of business without a license as required under this article.

SOURCES: Laws, 2000, ch. 621, § 28, eff from and after passage (approved May 23, 2000.)

§ 75-67-449. Liability of licensees.

(1) A licensee under this article shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) A licensee under this article, acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.

SOURCES: Laws, 2000, ch. 621, § 29, eff from and after passage (approved May 23, 2000.)

ARTICLE 11.

MISSISSIPPI CHECK CASHERS ACT.

SEC.

75-67-501. Short title.
75-67-503. Definitions.
75-67-505. Licensing requirements [Repealed effective July 1, 2018].
75-67-507. Exemptions.
75-67-509. Applicant eligibility requirements.
75-67-511. Application form.
75-67-513. Investigations, findings and posting of licenses.
75-67-515. Licensee duties; regulations; examination of books and records.
75-67-516. Licensee prohibited from advertising, displaying, or publishing false or misleading statements.
75-67-517. Maximum fees; advancing monies; time to deposit check.
75-67-519. Deferred and delayed deposits; licensee to provide consumer education pamplet to customer.
75-67-521. Suspending or revoking license; reinstatement; notice to law enforcement.
75-67-523. Investigative powers and examinations.
75-67-525. Engaging in business without license; penalty.
75-67-527. Violations; criminal and civil penalties; enforcement; order to refrain; injunctions; bond forfeiture.
75-67-529. Severability.
75-67-531. Application deadline for existing businesses.
75-67-533. Forms.
75-67-535. Municipal ordinances.
75-67-537. Commissioner employees and funds authorized for enforcement.
75-67-539. Repealed.

§ 75-67-501. Short title.

This article shall be known and may be cited as the "Mississippi Check Cashers Act."

SOURCES: Laws, 1998, ch. 587, § 1; reenacted and amended, Laws, 1999, ch. 481, § 1; reenacted without change, Laws, 2003, ch. 341; reenacted without change, Laws, 2007, ch. 488, § 1; reenacted without change, Laws, 2011, ch. 309, § 1; reenacted without change, Laws, 2013, ch. 408, § 1, eff from and after passage (approved March 20, 2013.)

ATTORNEY GENERAL OPINIONS

No licensee can accept any single check for an amount greater than $400.00, including fees; further, no licensee can accept multiple checks totaling in excess of $400.00, including fees. Allison, May 9, 2003, A.G. Op. #03-0189.

RESEARCH REFERENCES

Practice References. Commercial Finance Guide (Matthew Bender).

Commercial Loan Documentation Guide (Matthew Bender).

Consumer Credit Law Manual (Matthew Bender).

Kenneth M. Lapine, Consumer Credit: Laws, Transactions and Forms (Matthew Bender).

Burton V. McCullough, Dennis Lassila, et al., Banking Law (Matthew Bender).

Harold Weisblatt, Checks, Drafts, and Notes (Matthew Bender).

§ 75-67-503. Definitions.

The following words and phrases used in this article shall have the following meanings unless the context clearly indicates otherwise:

(a) "Appropriate law enforcement agency" means the sheriff of each county in which the licensee maintains an office, or the police chief of the municipality in which the licensee maintains an office, or law enforcement officers of the Department of Public Safety.

(b) "Attorney General" means the Attorney General of the State of Mississippi.

(c) "Check" means any check, draft, money order, personal money order, pre-authorized customer draft, or other instrument for the transmission or payment of money as determined by the Commissioner of Banking and Consumer Finance, but shall not include travelers checks or foreign drawn payment instruments.

(d) A "check casher" means any individual, partnership, association, joint-stock association, trust or corporation, excluding the United States government and the government of this state, who exchanges cash or other value for any check, draft, money order, personal money order, or other instrument for the transmission or payment of money, except travelers checks and foreign drawn payment instruments, and who charges a fee therefor.

(e) "Commissioner" means the Mississippi Commissioner of Banking and Consumer Finance, or his designee, as the designated official for the purpose of enforcing this article.

(f) "Department" means the Department of Banking and Consumer Finance.

(g) "Licensee" means any individual, partnership, association or corporation duly licensed by the Department of Banking and Consumer Finance to engage in the business of cashing checks under this article.

(h) "Person" means an individual, partnership, corporation, joint venture, trust, association or any legal entity however organized.

(i) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission or handling of money, whether such instrument is signed by the seller or by the purchaser or remitter or some other person.

SOURCES: Laws, 1998, ch. 587, § 2; reenacted and amended, Laws, 1999, ch. 481, § 2; reenacted without change, Laws, 2003, ch. 341, § 2; reenacted without change, Laws, 2007, ch. 488, § 2; reenacted without change, Laws, 2011, ch. 309, § 2; reenacted without change, Laws, 2013, ch. 408, § 2, eff from and after passage (approved March 20, 2013.)

Cross References — Department of Public Safety generally, see § 45-1-1 et seq.

§ 75-67-505. Licensing requirements [Repealed effective July 1, 2018].

(1)(a) A person may not engage in business as a check casher or otherwise portray himself as a check casher unless the person has a valid license authorizing engagement in the business. Any transaction that would be subject to this article that is made by a person who does not have a valid license under this article shall be null and void. A separate license is required for each place of business under this article and each business must be independent of, and not a part of, any other business operation. A check cashing business shall not be a part of, or located at the same business address with, a pawnshop, title pledge office and small loan company.

(b) A check cashing business shall (i) have a definitive United States postal address and E911 address; (ii) comply with local zoning requirements; (iii) have a minimum of one hundred (100) square feet with walls from floor to ceiling separating the operation from any other businesses; (iv) have an outside entrance, but may be located in an area that has a common lobby shared by other businesses as long as the customers do not enter the check cashing business through another business; (v) have proper signage; and (vi) maintain separate books and records. Any licensee who does not cash any delayed deposit checks as authorized under Section 75-67-519 shall not be subject to the requirements of subparagraphs (i), (iii) and (iv) of this paragraph.

(c) A licensed check casher may sell, at the same location as his check cashing business, the following items and services: money orders; income tax preparation service; copy service; wire transfer service; notary service; pagers; pager service; prepaid cellular service; debit card; prepaid telephone cards; prepaid telephone service; and operate a processing center where utility bills, credit card payments and other payments are collected from the general public and governmental and private payments are distributed. In the event a licensee accepts wire transfers in the form of a direct deposit of a payroll check or other similar types of deposit, the licensee shall not encumber any transferred funds against a deferred deposit agreement or any delinquent deferred deposit agreement with such customer. The commissioner may authorize additional functions in addition to those provided in this subsection that may be performed as part of a check cashing business, but shall authorize the offering of credit availability transactions as provided in Sections 75-67-601 through 75-67-637.

(d) The commissioner may issue more than one (1) license to a person if that person complies with this article for each license. A new license is required upon a change, directly or beneficially, in the ownership of any licensed check casher business and an application shall be made to the commissioner in accordance with this article.

(2) When a licensee wishes to move a check casher business to another location, the licensee shall give thirty (30) days' prior written notice to the commissioner who shall amend the license accordingly.

(3) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay the commissioner at the time of making the application a license fee of Seven Hundred Fifty Dollars ($750.00), and on or before September 1 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00). If the annual renewal fee remains unpaid twenty-nine (29) days after September 1, the license shall thereupon expire, but not before the thirtieth day of September of any year for which the annual fee has been paid. If any licensee fails to pay the annual renewal fee before the thirtieth day of September of any year for which the renewal fee is due, then the licensee shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the licensee has engaged in business after September 30. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) Notwithstanding other provisions of this article, the commissioner may issue a temporary license authorizing the operator of a check casher business on the receipt of an application for a license involving principals and owners that are substantially identical to those of an existing licensed check casher. The temporary license is effective until the permanent license is issued or denied.

SOURCES: Laws, 1998, ch. 587, § 3; reenacted and amended, Laws, 1999, ch. 481, § 3; Laws, 2001, ch. 534, § 1; reenacted without change, Laws, 2003, ch. 341, § 3; reenacted and amended, Laws, 2007, ch. 488, § 3; reenacted and amended, Laws, 2011, ch. 309, § 3; reenacted without change, Laws, 2013, ch. 408, § 3; Laws, 2016, ch. 500, § 21, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:

"SECTION 22. This act shall stand repealed on July 1, 2018."

Amendment Notes — The 2016 amendment added "but shall authorize...Sections 75-67-601 through 75-67-637" at the end of the last sentence of (c).

§ 75-67-507. Exemptions.

The provisions of this article shall not apply to:

(a) Any bank, trust company, savings association, savings and loan association, savings bank or credit union which is chartered under the laws of this state or under federal law and domiciled in this state.

(b) Any person who cashes checks at their face value and does not charge the consumer a fee or otherwise receive any consideration from the consumer.

(c) Any person principally engaged in the retail sale of goods or services who, either as an incident to or independently of a retail sale, may from time to time cash checks for a fee, not exceeding three percent (3%) of the face amount of the check or Ten Dollars ($10.00), whichever is greater. However, the fee shall be conspicuously posted for public view.

SOURCES: Laws, 1998, ch. 587, § 4; reenacted and amended, Laws, 1999, ch. 481, § 4; reenacted and amended, Laws, 2003, ch. 341, § 4; reenacted without change, Laws, 2007, ch. 488, § 4; reenacted without change, Laws, 2011, ch. 309, § 4; reenacted without change, Laws, 2013, ch. 408, § 4, eff from and after passage (approved March 20, 2013.)

§ 75-67-509. Applicant eligibility requirements.

To be eligible for a check casher license, an applicant shall:

(a) Operate lawfully and fairly within the purposes of this article.

(b) Not have been convicted of a felony in the last ten (10) years or be active as a beneficial owner for someone who has been convicted of a felony in the last ten (10) years.

(c) File with the commissioner a bond with good security in the penal sum of Ten Thousand Dollars ($10,000.00), payable to the State of Mississippi for the faithful performance by the licensee of the duties and obligations pertaining to the business so licensed and the prompt payment of any judgment which may be recovered against the licensee on account of charges or other claims arising directly or collectively from any violation of the provisions of this article. The bond shall not be valid until it is approved by the commissioner. The applicant may file, in lieu of the bond, cash, a certificate of deposit or government bonds in the amount of Ten Thousand Dollars ($10,000.00). Those deposits shall be filed with the commissioner and are subject to the same terms and conditions as are provided for in the surety bond required in this paragraph. Any interest or earnings on those deposits are payable to the depositor.

(d) File with the commissioner an application for a license and the initial license fee required in this article. If applicant's application is approved, a check casher license will be issued within thirty (30) days.

(e) Submit a set of fingerprints from any local law enforcement agency. In order to determine the applicant's suitability for license, the commissioner shall forward the fingerprints to the Department of Public Safety; and if no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(f) Complete and file with the commissioner an annual renewal application for a license accompanied by the renewal fee required in this article.

SOURCES: Laws, 1998, ch. 587, § 5; reenacted and amended, Laws, 1999, ch. 481, § 5; reenacted without change, Laws, 2003, ch. 341, § 5; reenacted without change, Laws, 2007, ch. 488, § 5; reenacted without change, Laws, 2011, ch. 309, § 5; reenacted without change, Laws, 2013, ch. 408, § 5, eff from and after passage (approved March 20, 2013.)

Cross References — Department of Public Safety generally, see § 45-1-1 et seq.

§ 75-67-511. Application form.

Each application for a license shall be in a form prescribed by the commissioner, signed under oath, and shall include the following:

(a) The legal name, residence and business address of the applicant and, if the applicant is a partnership, association or corporation, of every member, officer and director thereof.

However, the application need not state the full name and address of each shareholder, if the applicant is owned directly or beneficially by a person which as an issuer has a class of securities registered under Section 12 of the Securities and Exchange Act of 1934 or is an issuer of securities which is required to file reports with the Securities and Exchange Commission under Section 15(d) of the Securities and Exchange Act, provided that the person files with the commissioner such information, documents and reports as are required by the provisions of the Securities and Exchange Act to be filed by the issuer with the Securities and Exchange Commission.

(b) The complete address of the location at which the applicant proposes to engage in the business of cashing checks.

(c) Other data and information the department may require with respect to the applicant, its directors, trustees, officers, members or agents.

(d) Sworn financial statements of the applicant showing a net worth of at least Twenty Thousand Dollars ($20,000.00) for the first license. The applicant shall possess and maintain a net worth of at least Twenty Thousand Dollars ($20,000.00) for the first license and at least Five Thousand Dollars ($5,000.00) for each additional license.

SOURCES: Laws, 1998, ch. 587, § 6; reenacted and amended, Laws, 1999, ch. 481, § 6; reenacted without change, Laws, 2003, ch. 341, § 6; reenacted without change, Laws, 2007, ch. 488, § 6; reenacted without change, Laws, 2011, ch. 309, § 6; reenacted without change, Laws, 2013, ch. 408, § 6, eff from and after passage (approved March 20, 2013.)

Federal Aspects — Section 12 of the Securities and Exchange Act of 1934 is codified as 15 USCS § 78*l*.

Section 15(d) of the Securities and Exchange Act of 1934 is codified as 15 USCS § 78o(d).

§ 75-67-513. Investigations, findings and posting of licenses.

(1) Upon filing of an application in a form prescribed by the commissioner, accompanied by the documents required in this article, the department shall investigate to ascertain whether the qualifications prescribed by Sections 75-67-509 and 75-67-511 have been satisfied. If the commissioner finds that the qualifications have been satisfied and, if he approves the documents so filed by the applicant, he shall issue to the applicant a license to engage in the business of check cashing in this state.

(2) The license shall be kept conspicuously posted in the place of business of the licensee.

SOURCES: Laws, 1998, ch. 587, § 7; reenacted and amended, Laws, 1999, ch. 481, § 7; reenacted without change, Laws, 2003, ch. 341, § 7; reenacted without change, Laws, 2007, ch. 488, § 7; reenacted without change, Laws, 2011, ch. 309, § 7; reenacted without change, Laws, 2013, ch. 408, § 7, eff from and after passage (approved March 20, 2013.)

§ 75-67-515. Licensee duties; regulations; examination of books and records.

(1) The department may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this article.

(2) To assure compliance with the provisions of this article, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner may charge the licensee an examination fee in an amount not less than Three Hundred Dollars ($300.00) nor more than Six Hundred Dollars ($600.00) for each office or location within the State of Mississippi plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

(3) Each licensee shall keep and use in its business any books, accounts and records the department may require to carry into effect the provisions of this article and the administrative regulations issued under this article. Every licensee shall preserve the books, accounts and records of its business for at least two (2) years.

(4) Any fee charged by a licensee for cashing a check shall be posted conspicuously to the bearer of the check before cashing the check, and the fee shall be a service fee and not interest.

(5) Before a licensee deposits with any bank or other depository institution a check cashed by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

(6) All personal checks cashed for a customer by a licensee shall be dated on the actual date the cash is tendered to the customer.

(7) No licensee shall cash a check payable to a payee unless the licensee has previously obtained appropriate identification of the payee clearly indicating the authority of the person cashing the check, draft or money order on behalf of the payee.

(8) No licensee shall indicate through advertising, signs, billboards or otherwise that checks may be cashed without identification of the bearer of the check; and any person seeking to cash a check shall be required to submit reasonable identification as prescribed by the department. The provisions of this subsection shall not prohibit a licensee from cashing a check simultaneously with the verification and establishment of the identity of the presenter by means other than presentation of identification.

(9) Within five (5) business days after being advised by the payor financial institution that a check has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority or represents the proceeds of illegal activity, the licensee shall notify the department and the district attorney for the judicial district in which the check was received. If a check is returned to the licensee by the payor financial institution for any of these reasons, the licensee may not release the check without consent of the district attorney or other investigating law enforcement authority.

(10) If a check is returned to a licensee from a payor financial institution because there are insufficient funds in or on deposit with the financial institution to pay the check, the licensee or any other person on behalf of the licensee shall not institute or initiate any criminal prosecution against the maker or drawer of the personal check with the intent and purpose of aiding in the collection of or enforcing the payment of the amount owed to the check casher by the maker or drawer of the check.

(11) Nothing in this article shall prohibit a licensee from issuing coupons to customers or potential customers which are redeemable against a deferred deposit transaction provided the redemption results in a financial benefit to the customer on current or future transactions.

SOURCES: Laws, 1998, ch. 587, § 8; reenacted and amended, Laws, 1999, ch. 481, § 8; Laws, 2001, ch. 534, § 2; reenacted and amended, Laws, 2003, ch. 341, § 8; reenacted without change, Laws, 2007, ch. 488, § 8; reenacted without change, Laws, 2011, ch. 309, § 8; reenacted without change, Laws, 2013, ch. 408, § 8, eff from and after passage (approved March 20, 2013.)

ATTORNEY GENERAL OPINIONS

Based on subsection (10) of this section, criminal prosecution may not be initiated on an individual who presents a check to a check cashing business when said check is returned for insufficient funds. Couch, Sept. 20, 2002, A.G. Op. #02-0532.

A licensed check casher may not pursue criminal charges against the maker of the check returned for insufficient funds. James, July 7, 2003, A.G. Op. #03-0291.

Section 97-19-55 does not override subsection (10) of this section and allow a check casher to pursue criminal charges against the maker of insufficient fund checks. James, July 7, 2003, A.G. Op. #03-0291.

A justice court clerk should take the affidavit of any person wishing to file one, including check cashers. James, July 7, 2003, A.G. Op. #03-0291.

A check cashing business may initiate a criminal prosecution for a check that is dishonored as a result of a closed account. Criswell, Dec. 22, 2006, A.G. Op. #06-0623.

§ 75-67-516. Licensee prohibited from advertising, displaying, or publishing false or misleading statements.

A licensee shall not advertise, display or publish, or permit to be advertised, displayed or published, in any manner whatsoever, any statement or representation that is false, misleading or deceptive.

SOURCES: Laws, 2001, ch. 534, § 5; reenacted without change, Laws, 2003, ch. 341, § 9; reenacted without change, Laws, 2007, ch. 488, § 9; reenacted without change, Laws, 2011, ch. 309, § 9; reenacted without change, Laws, 2013, ch. 408, § 9, eff from and after passage (approved March 20, 2013.)

§ 75-67-517. Maximum fees; advancing monies; time to deposit check.

Notwithstanding any other provision of law, no check cashing business licensed under this article shall directly or indirectly charge or collect fees for check cashing services in excess of the following:

(a) Three percent (3%) of the face amount of the check or Five Dollars ($5.00), whichever is greater, for checks issued by the federal government, state government, or any agency of the state or agency of the state or federal government, or any county or municipality of this state.

(b) Ten percent (10%) of the face amount of the check or Five Dollars ($5.00), whichever is greater, for personal checks.

(c) Five percent (5%) of the face amount of the check or Five Dollars ($5.00), whichever is greater, for all other checks, or for money orders.

A licensee may not advance monies on the security of any personal check unless the presenter attests that the check being presented is drawn on a legitimate, open and active account. Except as provided by Section 75-67-519, any licensee who cashes a check for a fee shall deposit the check not later than three (3) business days from the date the check is cashed.

SOURCES: Laws, 1998, ch. 587, § 9; reenacted and amended, Laws, 1999, ch. 481, § 9; reenacted without change, Laws, 2003, ch. 341, § 10; reenacted without change, Laws, 2007, ch. 488, § 10; reenacted without change,

Laws, 2011, ch. 309, § 10; reenacted without change, Laws, 2013, ch. 408, § 10, eff from and after passage (approved March 20, 2013.)

§ 75-67-519. Deferred and delayed deposits; licensee to provide consumer education pamplet to customer.

(1)(a) A licensee may delay the deposit of a personal check cashed for a customer with a face amount of not more than Two Hundred Fifty Dollars ($250.00) for up to thirty (30) days under the provisions of this section.

(b) A licensee shall enter into a written agreement for a delayed deposit transaction of a personal check cashed for a customer with a face amount of more than Two Hundred Fifty Dollars ($250.00) but not more than Five Hundred Dollars ($500.00) for a period of at least twenty-eight (28) days but not more than thirty (30) days, as selected by the customer, under the provisions of this section, with the licensee having the option to deposit or collect the check.

(2) The face amount of delayed deposit checks cashed under the provisions of this section shall not exceed Five Hundred Dollars ($500.00), including the amount of the fees. Each customer is limited to a maximum amount of Five Hundred Dollars ($500.00), including the amount of the fees, at any time.

(3) Each delayed deposit check cashed by a licensee shall be documented by a written agreement that has been signed by the customer and the licensee. The written agreement shall contain a statement of the total amount of any fees charged, expressed as a dollar amount and as an annual percentage rate. The written agreement shall authorize the licensee to delay deposit of the personal check with a face amount of not more than Two Hundred Fifty Dollars ($250.00) until a specific date not later than thirty (30) days from the date of the transaction, and shall authorize the licensee to delay deposit or collection of the personal check with a face amount of more than Two Hundred Fifty Dollars ($250.00) but not more than Five Hundred Dollars ($500.00) in accordance with the written agreement.

(4)(a) A licensee shall not directly or indirectly charge any fee or other consideration in excess of Twenty Dollars ($20.00) per One Hundred Dollars ($100.00) advanced for cashing a delayed deposit check with a face amount of not more than Two Hundred Fifty Dollars ($250.00).

(b) A licensee shall not directly or indirectly charge any fee or other consideration in excess of Twenty-one Dollars and Ninety-five Cents ($21.95) per One Hundred Dollars ($100.00) advanced for cashing a delayed deposit check with a face amount of more than Two Hundred Fifty Dollars ($250.00) but not more than Five Hundred Dollars ($500.00).

(c) In no event shall the amount of the checks cashed exceed Five Hundred Dollars ($500.00), including the amount of the fee.

(5) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same licensee or any affiliate of the licensee. A licensee shall not renew or otherwise extend any delayed deposit check.

(6) A licensee shall not offer discount catalog sales or other similar inducements as part of a delayed deposit transaction.

(7) A licensee shall not charge a late fee or collection fee on any deferred deposit transaction as a result of a returned check or the default by the customer in timely payment to the licensee. Notwithstanding anything to the contrary contained in this section, a licensee may charge a processing fee, not to exceed an amount authorized by the commissioner, for a check returned for any reason, including, without limitation, insufficient funds, closed account or stop payment, if such processing fee is authorized in the written agreement signed by the customer and licensee. In addition, if a licensee takes legal action against a customer to collect the amount of a delayed deposit check for which the licensee has not obtained payment and obtains a judgment against the customer for the amount of that check, the licensee shall also be entitled to any court-awarded fees.

(8) When cashing a delayed deposit check, a licensee may pay the customer in the form of the licensee's business check or a money order; however, no additional fee may then be charged by the licensee for cashing the licensee's business check or money order issued to the customer.

(9) Before entering any transactions under this section, a licensee shall provide to the customer a pamphlet prepared by the commissioner that describes general information about the transaction and about the customer's rights and responsibilities in the transaction, and that includes the consumer hotline phone number to the Mississippi Department of Banking and Consumer Finance and to the Mississippi Attorney General's office. Each agreement executed by a licensee shall include the following statement, which shall be located just above the signature line for the customer:

"In addition to agreeing to the terms of this agreement, I acknowledge, by my signature below, the receipt of a consumer education pamphlet regarding this transaction."

SOURCES: Laws, 1998, ch. 587, § 10; reenacted and amended, Laws, 1999, ch. 481, § 10; Laws, 2001, ch. 534, § 3; reenacted without change, Laws, 2003, ch. 341, § 11; reenacted without change, Laws, 2007, ch. 488, § 11; Laws, 2011, ch. 309, § 11; reenacted without change, Laws, 2013, ch. 408, § 11, eff from and after passage (approved March 20, 2013.)

ATTORNEY GENERAL OPINIONS

A licensee may contract for and charge a fee for a non-sufficient check (NSF) charge, a late fee, a collection fee, and/or reasonable attorneys fees and court costs if such default fees or charges are set forth in the written agreement required by subsection (3). Parham, November 20, 1998, A.G. Op. #98-0700.

The 18% fee permitted by subsection (4) is the maximum that a licensee may charge when the obligation is paid when due, that is, the check is paid when presented and is not dishonored. Parham, November 20, 1998, A.G. Op. #98-0700.

§ 75-67-521. Suspending or revoking license; reinstatement; notice to law enforcement.

(1) The commissioner may, after notice and hearing, suspend or revoke a license if he finds that:

(a) The licensee, either knowingly, or without the exercise of due care to prevent the same, has violated any provision of this article;

(b) Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner in refusing the license;

(c) The licensee has aided, abetted or conspired with an individual or person to circumvent or violate the requirement of this article;

(d) The licensee, or a legal or beneficial owner of the license, has been convicted of a felony, or has been convicted of a misdemeanor that the commissioner finds directly relates to the duties and responsibilities of the business of check cashing.

(2) The commissioner may conditionally license or place on probation a person whose license has been suspended or may reprimand a licensee for a violation of this article.

(3) The manner of giving notice and conducting a hearing as required by subsection (1) of this section shall be performed in accordance with procedures prescribed by the commissioner in rules or regulations adopted under Mississippi Administrative Procedures Law, Section 25-43-1.101 et seq.

(4) Any licensee may surrender any license by delivering it to the commissioner with written notice of its surrender, but that surrender shall not affect the licensee's civil or criminal liability for acts committed prior thereto.

(5) The commissioner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the commissioner in refusing originally to issue a license under this article.

(6) The appropriate local law enforcement agency shall be notified of any licensee who has his license suspended or revoked as provided by this article.

(7) The commissioner shall enforce the provisions of this section.

SOURCES: Laws, 1998, ch. 587, § 11; reenacted and amended, Laws, 1999, ch. 481, § 11; reenacted without change, Laws, 2003, ch. 341, § 12; reenacted without change, Laws, 2007, ch. 488, § 12; reenacted without change, Laws, 2011, ch. 309, § 12; reenacted without change, Laws, 2013, ch. 408, § 12, eff from and after passage (approved March 20, 2013.)

Editor's Note — Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq., referred to in subsection (3) of this section, shall be deemed to mean and refer to Section 25-43-1.101 et seq.

§ 75-67-523. Investigative powers and examinations.

The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business which requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this article, including without limiting the conduct of business without a license as required under this article.

SOURCES: Laws, 1998, ch. 587, § 12; reenacted and amended, Laws, 1999, ch. 481, § 12; reenacted without change, Laws, 2003, ch. 341, § 13; reenacted without change, Laws, 2007, ch. 488, § 13; reenacted without change, Laws, 2011, ch. 309, § 13; reenacted without change, Laws, 2013, ch. 408, § 13, eff from and after passage (approved March 20, 2013.)

§ 75-67-525. Engaging in business without license; penalty.

(1) Any person who engages in the business of check cashing without first securing a license prescribed by this article shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not in excess of One Thousand Dollars ($1,000.00) or by confinement in the county jail for not more than one (1) year, or both.

(2) Any person who engages in the business of check cashing without first securing a license prescribed by this article shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person has engaged in the business without a license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

SOURCES: Laws, 1998, ch. 587, § 13; reenacted and amended, Laws, 1999, ch. 481, § 13; Laws, 2001, ch. 534, § 4; reenacted without change, Laws, 2003, ch. 341, § 14; reenacted without change, Laws, 2007, ch. 488, § 14; reenacted without change, Laws, 2011, ch. 309, § 14; reenacted without change, Laws, 2013, ch. 408, § 14, eff from and after passage (approved March 20, 2013.)

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-67-527. Violations; criminal and civil penalties; enforcement; order to refrain; injunctions; bond forfeiture.

(1) In addition to any other penalty which may be applicable, any licensee or employee who willfully violates any provision of this article, or who willfully makes a false entry in any record specifically required by this article, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a

fine not in excess of One Thousand Dollars ($1,000.00) per violation or false entry.

(2) Compliance with the criminal provisions of this article shall be enforced by the appropriate law enforcement agency, which may exercise for that purpose any authority conferred upon the agency by law.

(3) When the commissioner has reasonable cause to believe that a person is violating any provision of this article, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this article, may enter an order requiring the person to stop or to refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

(4) The commissioner may impose a civil penalty against any licensee adjudged by the commissioner to be in violation of the provisions of this article. The civil penalty shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the Department of Banking and Consumer Finance, "Consumer Finance Fund."

(5) Any licensee convicted in the manner provided in this article shall forfeit the surety bond or deposit required in Section 75-67-509(c) and the amount of the bond or deposit shall be credited to the budget of the state or local agency which directly participated in the prosecution of the licensee, for the specific purpose of increasing law enforcement resources for that specific state or local agency. The bond or deposit shall be used to augment existing state and local law enforcement budgets and not to supplant them.

SOURCES: Laws, 1998, ch. 587, § 14; reenacted and amended, Laws, 1999, ch. 481, § 14; reenacted without change, Laws, 2003, ch. 341, § 15; reenacted without change, Laws, 2007, ch. 488, § 15; reenacted without change, Laws, 2011, ch. 309, § 15; reenacted without change, Laws, 2013, ch. 408, § 15, eff from and after passage (approved March 20, 2013.)

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-67-529. Severability.

The provisions of this article are severable. If any part of this article is declared invalid or unconstitutional, that declaration shall not affect the parts which remain.

SOURCES: Laws, 1998, ch. 587, § 15; reenacted and amended, Laws, 1999, ch. 481, § 15; reenacted without change, Laws, 2003, ch. 341, § 16; reenacted without change, Laws, 2007, ch. 488, § 16; reenacted without change, Laws, 2011, ch. 309, § 16; reenacted without change, Laws, 2013, ch. 408, § 16, eff from and after passage (approved March 20, 2013.)

§ 75-67-531. Application deadline for existing businesses.

Check cashers operating check cashing locations in business as of July 1, 1998, shall have until September 30, 1998, to apply for a license under this article, and upon the approval of the application, the commissioner shall grant a license under this article.

SOURCES: Laws, 1998, ch. 587, § 16; reenacted and amended, Laws, 1999, ch. 481, § 16; reenacted without change, Laws, 2003, ch. 341, § 17; reenacted without change, Laws, 2007, ch. 488, § 17; reenacted without change, Laws, 2011, ch. 309, § 17; reenacted without change, Laws, 2013, ch. 408, § 17, eff from and after passage (approved March 20, 2013.)

§ 75-67-533. Forms.

The commissioner shall develop and provide any necessary forms to carry out the provisions of this article.

SOURCES: Laws, 1998, ch. 587, § 17; reenacted and amended, Laws, 1999, ch. 481, § 17; reenacted without change, Laws, 2003, ch. 341, § 18; reenacted without change, Laws, 2007, ch. 488, § 18; reenacted without change, Laws, 2011, ch. 309, § 18; reenacted without change, Laws, 2013, ch. 408, § 18, eff from and after passage (approved March 20, 2013.)

§ 75-67-535. Municipal ordinances.

Municipalities in this state may enact ordinances which are in compliance with, but not more restrictive than, the provisions of this article. Any existing or future order, ordinance or regulation which conflicts with this provision shall be null and void.

SOURCES: Laws, 1998, ch. 587, § 18; reenacted and amended, Laws, 1999, ch. 481, § 18; reenacted without change, Laws, 2003, ch. 341, § 19; reenacted without change, Laws, 2007, ch. 488, § 19; reenacted without change, Laws, 2011, ch. 309, § 19; reenacted without change; Laws, 2013, ch. 408, § 19, eff from and after passage (approved March 20, 2013.)

§ 75-67-537. Commissioner employees and funds authorized for enforcement.

The commissioner may employ the necessary full-time employees above the number of permanent full-time employees authorized for the department for fiscal year 1999, to carry out and enforce the provisions of this article. The commissioner may also expend the necessary funds to equip and provide necessary travel expenses for those employees.

SOURCES: Laws, 1998, ch. 587, § 19; reenacted and amended, Laws, 1999, ch. 481, § 19; reenacted without change, Laws, 2003, ch. 341, § 20; reenacted without change, Laws, 2007, ch. 488, § 20; reenacted without change, Laws, 2011, ch. 309, § 20; reenacted without change, Laws, 2013, ch. 408, § 20, eff from and after passage (approved March 20, 2013.)

§ 75-67-539. Repealed.

Repealed by Laws of 2013, ch. 408, § 21, eff from and after passage (approved March 20, 2013).

§ 75-67-539. [Laws, 1998, ch. 587, § 20; reenacted and amended, Laws, 1999, ch. 481, § 20; Laws, 2001, ch. 534, § 6; Laws, 2003, ch. 341, § 21; Laws, 2007, ch. 488, § 21; Laws, 2011, ch. 309, § 21, eff from and after passage (approved Feb. 24, 2011.)]

Editor's Note — Former § 75-67-539 was the repealer on the Mississippi Check Cashers Act, codified as Sections 75-67-501 through 75-67-537.

ARTICLE 13.

MISSISSIPPI CREDIT AVAILABILITY ACT.

SEC.

75-67-601. Short title [Repealed effective July 1, 2018].
75-67-603. Definitions [Repealed effective July 1, 2018].
75-67-605. Licensing requirements [Repealed effective July 1, 2018].
75-67-607. Exemptions [Repealed effective July 1, 2018].
75-67-609. Applicant eligibility requirements [Repealed effective July 1, 2018].
75-67-611. Application form [Repealed effective July 1, 2018].
75-67-613. Investigations, findings and posting of licenses [Repealed effective July 1, 2018].
75-67-615. Licensee duties; regulations; examinations of books and records [Repealed effective July 1, 2018].
75-67-617. Advertising, displaying or publishing false or misleading statements prohibited [Repealed effective July 1, 2018].
75-67-619. Fees and charges; method of computation [Repealed effective July 1, 2018].
75-67-621. Licensee to provide account holder with a written explanation of fees and charges [Repealed effective July 1, 2018].
75-67-623. Suspending or revoking license; reinstatement; notice to law enforcement [Repealed effective July 1, 2018].
75-67-625. Investigative powers and examinations [Repealed effective July 1, 2018].
75-67-627. Engaging in business without license; penalty [Repealed effective July 1, 2018].
75-67-629. Violations; criminal and civil penalties; enforcement; order to refrain; injunctions; bond forfeiture [Repealed effective July 1, 2018].
75-67-631. Severability [Repealed effective July 1, 2018].
75-67-633. Municipal ordinances [Repealed effective July 1, 2018].
75-67-635. Commissioner employees and funds authorized for enforcement [Repealed effective July 1, 2018].
75-67-637. Liability of licensees [Repealed effective July 1, 2018].

§ 75-67-601. Short title [Repealed effective July 1, 2018].

This article shall be known and may be cited as the "Mississippi Credit Availability Act."

SOURCES: Laws, 2016, ch. 500, § 1, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-603. Definitions [Repealed effective July 1, 2018].

The following words and phrases used in this article shall have the following meanings unless the context clearly indicates otherwise:

(a) "Appropriate law enforcement agency" means the sheriff of each county in which the licensee maintains an office, or the police chief of the municipality in which the licensee maintains an office, or law enforcement officers of the Department of Public Safety.

(b) "Attorney General" means the Attorney General of the State of Mississippi.

(c) "Commissioner" means the Mississippi Commissioner of Banking and Consumer Finance, or his designee, as the designated official for the purpose of enforcing this article.

(d) "Credit availability account" means all credit availability transactions held in the name of a single person through a single licensee or, if a secured transaction and the property is jointly owned, the names of the persons who jointly own the property that is being used as security for the transaction. That person or those persons shall be the "account holder" or "account holders."

(e) "Credit availability transaction" means a transaction whereby a credit availability licensee provides a consumer with a fully amortized loan, secured or unsecured, payable in substantially equal payments due monthly, or on any other schedule mutually agreed upon by the licensee and the consumer, over an overall term of four (4) to twelve (12) months, calculated on the amount initially disbursed to the account holder or holders plus any fees that may be charged in an amount and manner provided for under this article.

(f) "Department" means the Department of Banking and Consumer Finance.

(g) "Licensee" means any individual, partnership, association or corporation duly licensed by the Department of Banking and Consumer Finance to engage in the business of providing credit availability transactions under this article.

(h) "Month" means the calendar month beginning on and including the date of the credit availability transaction.

(i) "Person" means an individual, partnership, corporation, joint venture, trust, association or any legal entity, however organized.

(j) "Written" and "writing" includes communication of information in an electronic record consistent with the federal Electronic Signatures in Global and National Commerce (E-SIGN) Act, 15 USC Section 7001 et seq.

SOURCES: Laws, 2016, ch. 500, § 2, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-605. Licensing requirements [Repealed effective July 1, 2018].

(1) A person may not engage in business as a credit availability licensee or otherwise portray himself as a credit availability licensee unless the person has a valid license authorizing him to engage in the business. Any transaction that would be subject to this article that is made by a person who does not have a valid license under this article shall be null and void.

(2) A credit availability licensee shall (a) have a definitive United States postal address and E911 address; and (b) comply with applicable local zoning requirements, except as otherwise provided in this article; and (c) maintain separate books and records for credit availability transactions.

(3)(a) The commissioner may issue more than one (1) license to a person if that person complies with this article for each license. A new license is required upon a change, directly or beneficially, in the ownership of any licensed credit availability business and an application shall be made to the commissioner in accordance with this article.

(b) When a licensee wishes to move a credit availability business to another physical location, the licensee shall give thirty (30) days' prior written notice to the commissioner who shall amend the license accordingly.

(c) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay the commissioner at the time of making the application a license fee of Seven Hundred Fifty Dollars ($750.00), and on or before September 1 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00). If the annual renewal fee remains unpaid twenty-nine (29) days after September 1, the license shall thereupon expire, but not before the thirtieth day of September of any year for which the annual fee has been paid. If any licensee fails to pay the annual renewal fee before the thirtieth day of September of any year for which the renewal fee is due, then the licensee shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the licensee has engaged in business after September 30. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) Notwithstanding any other provisions of this article, the commissioner may issue a temporary license authorizing the operation of a credit availability business on the receipt of an application for a license involving principals and owners that are substantially identical to those of an existing licensed credit availability licensee. The temporary license is effective until the permanent license is issued or denied.

(5) Notwithstanding other provisions of this article, neither a new license nor an application to transfer an existing license shall be required upon any change, directly or beneficially, in the ownership of any licensed business incorporated under the laws of this state or any other state so long as the licensee continues to operate as a corporation doing a credit availability business under the license.

(6) Persons licensed under Sections 75-67-401 et seq. and 75-67-501 et seq. on July 1, 2016, shall have until September 30, 2016, to apply for an expedited license approval under this article. The commissioner, in his discretion, may waive certain documentation already on file under those licenses, including fingerprints, and may promulgate an application that expedites the licensing process. Upon the approval of the application, the commissioner shall grant a license under this article.

SOURCES: Laws, 2016, ch. 500, § 3, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-607. Exemptions [Repealed effective July 1, 2018].

The provisions of this article shall not apply to any bank, trust company, savings association, savings and loan association, savings bank or credit union that is chartered under the laws of this state or under federal law and domiciled in this state.

SOURCES: Laws, 2016, ch. 500, § 4, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-609. Applicant eligibility requirements [Repealed effective July 1, 2018].

To be eligible for a credit availability license, an applicant shall:

(a) Operate lawfully and fairly within the purposes of this article.

(b) Not have been convicted in the last ten (10) years or be active as a beneficial owner for someone who has been convicted in the last ten (10) years of a crime that the commissioner finds directly relates to the duties and responsibilities of the business of offering credit availability transactions.

(c) File with the commissioner a bond with good security in the penal sum of Ten Thousand Dollars ($10,000.00), payable to the State of Mississippi, for the faithful performance by the licensee of the duties and obligations pertaining to the business so licensed and the prompt payment of any judgment which may be recovered against the licensee on account of charges or other claims arising directly or collectively from any violation of the provisions of this article. The bond shall not be valid until the commissioner approves it. The applicant may file, in lieu of the bond, cash, a certificate of deposit or government bonds in the amount of Ten Thousand Dollars ($10,000.00). Those deposits shall be filed with the commissioner and are subject to the same terms and conditions as are provided for in the surety bond required in this paragraph. Any interest or earnings on those deposits are payable to the depositor. Applicants applying for multiple licenses may submit a single bond for all licenses, provided that the total value of the bond is equal to Ten Thousand Dollars ($10,000.00) per license applied for.

(d) File with the commissioner an application for a license and the initial license fee required in this article. If applicant's application is approved, a credit availability license will be issued within thirty (30) days.

(e) File with the commissioner a set of fingerprints from any local law enforcement agency for each owner of a sole proprietorship, partners in a partnership or principal owners of a limited liability company that own at least ten percent (10%) of the voting shares of the company, shareholders owning ten percent (10%) or more of the outstanding shares of the corporation, except publically traded corporations and their subsidiaries, and any other executive officer with significant oversight duties of the business. In order to determine the applicant's suitability for license, the commissioner shall forward the fingerprints to the Department of Public Safety; and if no disqualifying record is identified at the state level, the Department of Public Safety shall forward the fingerprints to the FBI for a national criminal history record check.

(f) Complete and file with the commissioner an annual renewal application for a license accompanied by the renewal fee required in this article.

SOURCES: Laws, 2016, ch. 500, § 5, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-611. Application form [Repealed effective July 1, 2018].

Each application for a license shall be in a form prescribed by the commissioner, signed under oath or otherwise authenticated in a record, and shall include the following:

(a) The legal name, residence and business address of the applicant and, if the applicant is a partnership, association or corporation, of every member, officer and director thereof. However, the application need not state the full name and address of each shareholder, if the applicant is owned directly or beneficially by a person which as an issuer has a class of securities registered under Section 12 of the Securities and Exchange Act of 1934 or is an issuer of securities which is required to file reports with the Securities and Exchange Commission under Section 15(d) of the Securities and Exchange Act, provided that the person files with the commissioner such information, documents and reports as are required by the provisions of the Securities and Exchange Act to be filed by the issuer with the Securities and Exchange Commission. The commissioner may, however, require the licensee to provide such information as he deems reasonable and appropriate concerning the officers and directors of the corporation and persons owning in excess of twenty-five percent (25%) of the outstanding shares of the corporation.

(b) The complete address of the location at which the applicant proposes to engage in the business of offering credit availability transactions.

(c) Other data and information the department may require with respect to the applicant, its directors, trustees, officers, members or agents.

(d) Sworn financial statements of the applicant showing a net worth of at least Twenty Thousand Dollars ($20,000.00) for the first license. The applicant shall possess and maintain a net worth of at least Twenty Thousand Dollars ($20,000.00) for the first license and at least Five Thousand Dollars ($5,000.00) for each additional license.

SOURCES: Laws, 2016, ch. 500, § 6, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

Federal Aspects — Section 12 of the Securities Exchange Act of 1934 is codified as 15 USCS § 78*l*.

Section 15(d) of the Securities Exchange Act of 1934 is codified as 15 USCS 78o(d).

§ 75-67-613. Investigations, findings and posting of licenses [Repealed effective July 1, 2018].

(1) Upon filing of an application in a form prescribed by the commissioner, accompanied by the documents required in this article, the department shall investigate to ascertain whether the qualifications prescribed in this article have been satisfied. If the commissioner finds that the qualifications have been satisfied and, if he approves the documents so filed by the applicant, he shall issue to the applicant a license to engage in the credit availability business in this state.

(2) The license shall be kept conspicuously posted in the place of business of the licensee.

SOURCES: Laws, 2016, ch. 500, § 7, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-615. Licensee duties; regulations; examinations of books and records [Repealed effective July 1, 2018].

(1) The department may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this article and shall develop and provide any necessary forms or other documentation to carry out the provisions of this article.

(2) To assure compliance with the provisions of this article, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner may charge the licensee an examination fee in an amount not less than Three Hundred Dollars

($300.00) nor more than Six Hundred Dollars ($600.00) for each office or location within the State of Mississippi plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon a consumer complaint and/or other exigent reasons as determined by the commissioner.

(3) Each licensee shall keep and use in its business any books, accounts and records the department may require to carry into effect the provisions of this article and the administrative regulations issued under this article. Every licensee shall preserve the books, accounts and records of its business for at least two (2) years.

SOURCES: Laws, 2016, ch. 500, § 8, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-617. Advertising, displaying or publishing false or misleading statements prohibited [Repealed effective July 1, 2018].

A licensee shall not advertise, display or publish, or permit to be advertised, displayed or published, in any manner whatsoever, any statement or representation that is false, misleading or deceptive.

SOURCES: Laws, 2016, ch. 500, § 9, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-619. Fees and charges; method of computation [Repealed effective July 1, 2018].

(1) Notwithstanding any other statutory limitation, a licensee authorized to provide credit availability transactions under this article may charge and collect fees and charges in a manner consistent with this section, and may take as security therefor any personal property that is not exempt or prohibited by state or federal law or regulations.

(2)(a) A licensee may charge and collect a monthly handling fee for services, expenses, and costs not to exceed twenty-five percent (25%) of the outstanding principal balance of any credit availability account per month, or any portion thereof, for transactions of Five Hundred Dollars ($500.00) or less. The handling fee shall not be deemed interest for any purpose of law.

(b) A licensee may charge and collect a monthly handling fee for services, expenses, and costs not to exceed twenty-five percent (25%) of the outstanding principal balance of any credit availability account per month, or portion thereof, for transactions in excess of Five Hundred Dollars ($500.00). The handling fee shall not be deemed interest for any purpose of law.

(c)(i) In addition to the charges authorized under this subsection (2), a licensee may also charge and collect an origination fee in the amount of one percent (1%) of the amount disbursed to the account holder or Five Dollars ($5.00), whichever is greater, for costs associated with providing a credit availability transaction.

(ii) The origination fee shall not be deemed interest for any purpose of law.

(3)(a) No credit availability account created under subsection (2)(a) of this section shall have an outstanding principal balance in excess of Five Hundred Dollars ($500.00) at any time.

(b) No credit availability account created under subsection (2)(b) of this section shall have an outstanding principal balance in excess of Two Thousand Five Hundred Dollars ($2,500.00) at any time.

(4)(a) Any credit availability account created under subsection (2)(a) of this section shall be a fully amortized loan, secured or unsecured, payable in equal payments of four (4) to six (6) months calculated on the amount initially disbursed to the account holder plus any fees that may be charged, in an amount and manner provided for under this article.

(b) Any credit availability account created under subsection (2)(b) of this section shall be a fully amortized loan, secured or unsecured, payable in equal payments of six (6) to twelve (12) months calculated on the amount initially disbursed to the account holder plus any fees that may be charged, in an amount and manner provided for under this article.

(5) In the event an account holder is delinquent in payment of a monthly payment under the terms of a credit availability agreement, the licensee may charge and collect from the account holder a late fee of ten percent (10%) of the past-due amount; provided, however, that no such late fee may be charged unless an account holder has failed to pay the past-due amount within ten (10) business days after the due date and provided that such fees are clearly disclosed in the credit availability agreement.

(6) In the event an account holder is in default under the terms of a credit availability agreement for more than sixty (60) days, the licensee may charge and collect from the account holder the following fees in connection with any such default, provided that such fees are clearly disclosed in the credit availability agreement:

(a) If the licensee is required to employ a third party, including an attorney, to collect on the account the licensee may:

(i) If the credit availability agreement so provides, charge and collect a reasonable collection fee and attorney's fee; and

(ii) If the credit availability agreement so provides, shall be entitled to recover from the account holder all court costs incurred and to recover any court-awarded damages, including those incurred on appeal.

(b) If applicable, the licensee may charge and collect from the account holder any fees and costs relating to the repossession and sale of collateral, including, but not limited to, fees and costs associated with the repossession, storage, preparation for sale and sale of collateral.

SOURCES: Laws, 2016, ch. 500, § 10, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-621. Licensee to provide account holder with a written explanation of fees and charges [Repealed effective July 1, 2018].

(1) A licensee shall provide each prospective account holder, before consummation of a credit availability transaction, a written explanation of the fees, and charges to be charged by the licensee and the due dates for all payments. The style, content, and method of executing the required written explanation shall comply with federal truth-in-lending laws and shall contain a statement that the account holder may prepay the unpaid balance in whole or in part at any time. The commissioner may promulgate rules in accordance with this article in order to assure complete and accurate disclosure of the fees and charges to be charged by a licensee under a credit availability agreement. At a minimum, the written explanation must include:

(a) The amount of the transaction;

(b) The date the agreement was entered into;

(c) A schedule or description of the payments;

(d) The name and address of the licensed office;

(e) The name of the person primarily obligated on the agreement;

(f) The amount of the principal;

(g) The agreed rate of charge stated on a percent per year basis and the amount in dollars and cents;

(h) All other disclosures required pursuant to state and federal law.

(2) The contract for any credit availability agreement shall include, along with other state or federal law requirements, the right for an account holder to rescind the transaction within one (1) business day; provided, however, that if the account holder accepts funds from the credit availability licensee prior to the expiration of the one-day rescission period, any origination fee charged shall be nonrefundable.

(3) A licensee with a physical location in this state shall display in its consumer waiting area, and shall provide a copy to any account holder that requests it, a pamphlet prepared by the department that describes general information about the transaction and about the account holder's rights and responsibilities in the transaction, including the rates and fees charged by the licensee, the licensee's rights in event of default by the consumer, the maximum allowable account balance, and the consumer hotline telephone number to the Mississippi Department of Banking and Consumer Finance. The licensee shall add the account information and/or complaint hotline telephone number of the licensee to the pamphlet. A licensee without a

physical location in this state shall make the information available on its website.

SOURCES: Laws, 2016, ch. 500, § 11, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-623. Suspending or revoking license; reinstatement; notice to law enforcement [Repealed effective July 1, 2018].

(1) The commissioner may, after notice and hearing, suspend or revoke a license if he finds that:

(a) The licensee, either knowingly, or without the exercise of due care to prevent the same, has violated any provision of this article;

(b) Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner in refusing the license;

(c) The licensee has aided, abetted or conspired with an individual or person to circumvent or violate the requirement of this article;

(d) The licensee, or a legal or beneficial owner of the license, has been convicted of a crime that the commissioner finds directly relates to the duties and responsibilities of the business of offering credit availability transactions.

(2) The commissioner may conditionally license or place on probation a person whose license has been suspended or may reprimand a licensee for a violation of this article.

(3) The manner of giving notice and conducting a hearing as required by subsection (1) of this section shall be performed in accordance with procedures prescribed by the commissioner in rules or regulations adopted under the Mississippi Administrative Procedures Law, Section 25-43-1 et seq.

(4) Any licensee may surrender any license by delivering it to the commissioner with written notice of its surrender, but that surrender shall not affect the licensee's civil or criminal liability for acts committed prior thereto.

(5) The commissioner may reinstate suspended licenses or issue new licenses to a person whose licenses have been revoked if no fact or condition then exists which clearly would have justified the commissioner in refusing originally to issue a license under this article.

(6) The appropriate local law enforcement agency shall be notified of any licensee who has his license suspended or revoked as provided by this article.

(7) The commissioner shall enforce the provisions of this section.

(8) No revocation, suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any debtor.

SOURCES: Laws, 2016, ch. 500, § 12, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."
The reference to "the Mississippi Administrative Procedures Law, Section 25-43-1 et seq." in (3) that should be to "the Mississippi Administrative Procedures Law, Section 25-43-1.101 et seq.

§ 75-67-625. Investigative powers and examinations [Repealed effective July 1, 2018].

The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business which requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this article, including without limitation the conduct of business without a license as required under this article.

SOURCES: Laws, 2016, ch. 500, § 13, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-627. Engaging in business without license; penalty [Repealed effective July 1, 2018].

(1) Any person who engages in the business of offering credit availability transactions without first securing a license prescribed by this article shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not to exceed One Thousand Dollars ($1,000.00) or by confinement in the county jail for not more than one (1) year, or both.

(2) Any person who engages in the business of offering credit availability transactions without first securing a license prescribed by this article shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the person engaged in the business without a license. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

SOURCES: Laws, 2016, ch. 500, § 14, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-67-629. Violations; criminal and civil penalties; enforcement; order to refrain; injunctions; bond forfeiture [Repealed effective July 1, 2018].

(1) In addition to any other penalty which may be applicable, any licensee or employee who willfully violates any provision of this article, or who willfully makes a false entry in any record specifically required by this article, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not to exceed One Thousand Dollars ($1,000.00) per violation or false entry.

(2) Compliance with criminal provisions of this article shall be enforced by the appropriate law enforcement agency, which may exercise for that purpose any authority conferred upon the agency by law.

(3) When the commissioner has reasonable cause to believe that a person is violating any provision of this article, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this article, may enter an order requiring the person to stop or to refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any action in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

(4) The commissioner may impose a civil penalty against any licensee adjudged by the commissioner to be in violation of the provisions of this article. The civil penalty shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the Department of Banking and Consumer Finance, "Consumer Finance Fund."

(5) Any licensee convicted in the manner provided in this article shall forfeit the surety bond or deposit required in this article and the amount of the bond or deposit shall be credited to the budget of the state or local agency which directly participated in the prosecution of the licensee, for the specific purpose of increasing law enforcement resources for that specific state or local agency. The bond or deposit shall be used to augment existing state and local law enforcement budgets and not to supplant them.

SOURCES: Laws, 2016, ch. 500, § 15, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:

"SECTION 22. This act shall stand repealed on July 1, 2018."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see §n 99-19-73.

§ 75-67-631. Severability [Repealed effective July 1, 2018].

The provisions of this article are severable. If any part of this article is declared invalid or unconstitutional, that declaration shall not affect the parts that remain.

SOURCES: Laws, 2016, ch. 500, § 16, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-633. Municipal ordinances [Repealed effective July 1, 2018].

(1) Municipalities of this state may enact ordinances that are in compliance with, but not more restrictive than, the provisions of this article. Any existing or future order, ordinance or regulation that conflicts with this provision shall be null and void.

(2) Notwithstanding any existing zoning ordinance, any person or entity conducting business under a valid license issued by the department pursuant to Section 75-67-401 et seq. or Section 75-67-501 et seq., as of July 1, 2016, that elects to secure a license under this article may not be restricted from continuing operations under this article in the same location, regardless of whether the licensee elects to continue, if permitted by law, or to terminate its previous license.

SOURCES: Laws, 2016, ch. 500, § 17, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-635. Commissioner employees and funds authorized for enforcement [Repealed effective July 1, 2018].

The commissioner may employ the necessary full-time employees above the number of permanent full-time employees authorized for the department for fiscal year 2016 to carry out and enforce the provisions of this article. The commissioner may also expend the necessary funds to equip and provide necessary travel expenses for those employees.

SOURCES: Laws, 2016, ch. 500, § 18, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

§ 75-67-637. Liability of licensees [Repealed effective July 1, 2018].

(1) A licensee under this article shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) A licensee under this article, acting in conformity with a written interpretation or approval by an official or employee of any state or federal agency or department, shall be presumed to have acted in accordance with applicable law, notwithstanding that after such act has occurred, the interpretation or approval is amended, rescinded, or determined by judicial or other authority to be incorrect or invalid for any reason.

SOURCES: Laws, 2016, ch. 500, § 19, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 500, § 22, provides:
"SECTION 22. This act shall stand repealed on July 1, 2018."

CHAPTER 69

Farm Loan Bonds

Sec.

75-69-1. Declaration of purpose.
75-69-3. Farm credit securities; security for all public funds.
75-69-5. Purchase of farm credit securities by executors, trustees, administrators and guardians, etc.
75-69-7. Insurance companies investing in farm credit securities.
75-69-9. State banks and trust companies investing in farm credit securities.

§ 75-69-1. Declaration of purpose.

It is the purpose of this chapter to encourage and to promote agriculture and agricultural production as the basis of the prosperity of all the people by assisting the availability for agricultural purposes, and for those engaged therein, of satisfactory credit facilities at a low rate of interest under the farmers cooperative system, as established in the laws of the United States by the provisions of the Federal Farm Loan Act, the Farm Credit Act of 1933, and acts amendatory of and supplementary to each of said acts.

SOURCES: Codes, Hemingway's 1921 Supp. § 4533a; 1930, § 4673; 1942, § 4758; Laws, 1920, ch. 182; Laws, 1958, ch. 139, § 1.

Editor's Note — The Farm Credit Act of 1933, referred to in this section, was codified as 12 USCS §§ 1131 et seq., but has been repealed by several subsequent acts of Congress.

Cross References — Agricultural credit corporations, see §§ 81-15-1 et seq.

Farmers' credit associations, see §§ 81-17-1 et seq.

Federal Aspects — The Federal Farm Loan Act is codified at 12 USCS §§ 2001 et seq.

§ 75-69-3. Farm credit securities; security for all public funds.

Federal farm loan bonds issued by the federal land banks, debentures issued by federal intermediate credit banks, and debentures issued by banks for cooperatives pursuant to said acts (all of such bonds and debentures being hereinafter called farm credit securities) are hereby designated as security for every character of public funds, and especially for the purpose of securing deposits made in designated depositories, of funds of the State of Mississippi, and of funds of the various counties, municipalities, levee boards, supervisors districts, school districts, rural electrification associations and authority, or any other public or municipal subdivisions which may now or hereafter exist in the State of Mississippi. Existing laws as to the designation of proper depositories for public funds are in nowise hereby disturbed.

SOURCES: Codes, Hemingway's 1921 Supp. § 4533b; 1930, § 4674; 1942, § 4759; Laws, 1920, ch. 182; Laws, 1958, ch. 139, § 2.

Cross References — Securities required of depositories, see §§ 27-105-5, 27-105-315, 27-105-355.

§ 75-69-5. Purchase of farm credit securities by executors, trustees, administrators and guardians, etc.

All trustees, executors, guardians and other fiduciaries in this state (unless prohibited by the will, deed or trust instrument, or unless any such trust instrument prescribes other investments exclusively) and administrators may, in addition to investments otherwise authorized by law, invest all funds held in trust or for investment in farm credit securities without the necessity of any precedent order of the chancery court and no liability whatsoever shall be incurred by any such fiduciary in purchasing farm credit securities without a precedent order of court.

SOURCES: Codes, Hemingway's 1921 Supp. § 4533c; 1930, § 4675; 1942, § 4760; Laws, 1920, ch. 182; Laws, 1958, ch. 139, § 3.

Cross References — Rights and duties of executor or administrator with will annexed, see § 91-7-47.

Investments by trustees, guardians, and other fiduciaries, see § 91-13-1 et seq.

Investment of surplus funds of ward, see § 93-13-57.

§ 75-69-7. Insurance companies investing in farm credit securities.

Any insurance company, hospital service association or burial association organized under the laws of the State of Mississippi, or properly domesticated within this state, and permitted to do business herein, may purchase farm credit securities with its capital, provided that there shall not be invested at any one time, in said securities, more than twenty-five percent (25%) of the total assets of any such association or company; but any such company may invest its accumulated funds and its reserves in said securities at its pleasure and without limitation hereby; and a deposit of said securities by any such foreign company, under the provisions of any law of this state, shall be accepted by the State of Mississippi as a compliance with such provision.

SOURCES: Codes, Hemingway's 1921 Supp. § 4533d; 1930, § 4676; 1942, § 4761; Laws, 1920, ch. 182; Laws, 1958, ch. 139, § 4.

Cross References — Investment of funds by domestic insurance companies, see § 83-19-51.

Deposit of securities required of foreign insurance companies, see § 83-21-3.

§ 75-69-9. State banks and trust companies investing in farm credit securities.

All banking corporations (including savings banks and trust companies), building and loan associations, credit unions, and finance companies, organized under the laws of the State of Mississippi, shall have power, each at its discretion, to invest its capital in farm credit securities to an amount not exceeding twenty-five percent (25%) thereof and to invest its surplus and undivided profits in said securities at its pleasure without limitation hereby.

SOURCES: Codes, Hemingway's 1921 Supp. § 4533e; 1930, § 4677; 1942, § 4762; Laws, 1920, ch. 182; Laws, 1958, ch. 139, § 5.

Cross References — Investment powers of credit unions, see §§ 81-13-11, 81-13-39. Investments by banks and trust companies, generally, see § 81-5-33.

CHAPTER 71

Mississippi Securities Act of 2010

Sec.
75-71-1 through 75-71-57. Repealed

Article 1. General Provisions 75-71-101
Article 2. Exemptions From Registration of Securities 75-71-201
Article 3. Registration of securities and notice filing of federal covered securities 75-71-301
Article 4. Broker-dealers, agents, investment advisers, investment adviser representatives, and federal covered investment advisers 75-71-401
Article 5. Fraud and liabilities 75-71-501
Article 6. Administration and Judicial Review 75-71-601
Article 7. Transition 75-71-701

Editor's Note — Section 2 of Chapter 528, Laws of 2009, effective January 1, 2010, repealed the sections formerly codified as the Uniform Securities Laws in Chapter 71 of Title 75, comprising Sections 75-71-101 through 75-71-127 (Article 1 — General Provisions), 75-71-201 through 75-71-207 (Article 3 — Exempt Securities and Transactions), 75-71-301 through 75-71-333 (Article 5 — Registration of Broker-Dealers, Agents and Investment Advisers), 75-71-401 through 75-71-431 (Article 7 — Registration of Securities), 75-71-501 and 75-71-503 (Article 9 — Fraudulent and Other Prohibited Practices), 75-71-601 through 75-71-605 (Article 11 — Judicial Review of Orders) and 75-71-701 through 75-71-735 (Article 13 — Enforcement, Remedies, Liabilities and Penalties).

Section 1 of Chapter 528, Laws of 2009, effective January 1, 2010, enacted a revised Uniform Securities Laws of 2010, comprising Sections 75-71-101 through 75-71-701.

Where appropriate, notes to judicial decisions have been moved from their location under former provisions to the comparable new provisions.

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§§ 75-71-1 through 75-71-57. Repealed.

Repealed by Laws, 1981, ch. 521, § 418, eff from and after July 1, 1981.

[Codes, 1942, §§ 5360-5370, 5371, 5385, 5386, 5389; Laws, 1958, ch. 202, §§ 1-26, 30; Laws, 1962, ch. 232, §§ 1-3; 1964, ch. 272, §§ 1-3; Laws, 1964, ch. 273; Laws, 1970, ch. 311, §§ 1, 2]

Editor's Note — Former §§ 75-71-1 through 75-71-57 contained the Mississippi Securities Law. For current provisions, see §§ 75-71-101 et seq.

Laws of 1981, ch. 521, § 418(b) through (e), effective July 1, 1981, provides as follows:

"SECTION 418. (b) Prior law exclusively governs all suits, actions, prosecutions or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this act, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within two (2) years after the effective date of this act.

"(c) All effective registrations under prior law, all administrative orders relating to such registrations, and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if this act had not been passed. They are considered to have been filed, entered or imposed under this act, but are governed by prior law.

"(d) Prior law applies in respect of any offer or sale made within one (1) year after the effective date of this act pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law.

"(e) Judicial review of all administrative orders as to which review proceedings have not been instituted by the effective date of this act are governed by Section 411 [§ 75-71-421], except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within sixty (60) days after the effective date of this act."

ARTICLE 1.

GENERAL PROVISIONS.

SEC.
75-71-101. Short title.
75-71-102. Definitions.
75-71-103. References to federal statutes.
75-71-104. References to federal agencies.
75-71-105. Electronic records and signatures.
75-71-107 through 75-71-127. Repealed

§ 75-71-101. Short title.

This chapter may be cited as the Mississippi Securities Act of 2010.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-101 [Laws, 1981, ch. 521, § 416, effective from and after July 1, 1981; Repealed by Laws, 2009, ch. 528, § 2, effective from and after January 1, 2010] provided the chapter's short title, "Uniform Securities Law."

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Comparable Laws from other States — Alabama: Code of Ala. § 8-6-1 et seq.
Alaska: Alaska Stat. § 45.55.010 et seq.
Arizona: A.R.S. §§ 44-1841 through 44-2005.
Arkansas: A.C.A. § 23-42-101 et seq.
Colorado: C.R.S. 11-51-101 et seq.
Connecticut: Conn. Gen. Stat. § 36b-2 et seq.
Delaware: 6 Del. C. § 73-101 et seq.
District of Columbia: D.C. Code § 31-5601.01 et seq.
Florida: Fla. Stat. § 517.021 et seq.
Georgia: O.C.G.A. § 10-5-1 et seq.
Hawaii: HRS § 485A-101 et seq.
Idaho: Idaho Code § 30-14-101 et seq.
Illinois: 815 ILCS 5/1 et seq.
Indiana: Burns Ind. Code Ann. § 23-19-1-1 et seq.
Iowa: Iowa Code § 502.101 et seq.

Kansas: K.S.A. § 17-12a101 et seq.
Kentucky: KRS § 292.310 et seq.
Louisiana: La. R.S. § 51:701 et seq.
Maine: 32 M.R.S. § 16101 et seq.
Maryland: Md. CORPORATIONS AND ASSOCIATIONS Code Ann. § 11-101 et seq.
Michigan: MCLS § 451.501 et seq.
Minnesota: Minn. Stat. § 80A.40 et seq.
Missouri: § 409.1-101 R.S.Mo. et seq.
Montana: 30-10-101, MCA et seq.
Nebraska: R.R.S. Neb. § 8-1101 et seq.
Nevada: Nev. Rev. Stat. Ann. § 90.211 et seq.
New Hampshire: RSA 421-B:1-101 et seq.
New Jersey: N.J. Stat. § 49:3-47 et seq.
New Mexico: N.M. Stat. Ann. § 58-13C-101 et seq.
North Carolina: N.C. Gen. Stat. § 78A-1 et seq.
North Dakota: N.D. Cent. Code, § 10-04-01 et seq.
Ohio: ORC Ann. 1707.01 et seq.
Oklahoma: 71 Okl. St. § 1-101 et seq.
Oregon: ORS § 59.005 et seq.
Pennsylvania: 70 P.S. § 1-101 et seq.
Rhode Island: R.I. Gen. Laws § 7-11-804 et seq.
South Carolina: S.C. Code Ann. § 35-1-101 et seq.
South Dakota: S.D. Codified Laws § 47-31B-101 et seq.
Tennessee: Tenn. Code Ann. § 48-1-101 et seq.
Utah: Utah Code Ann. § 61-1-1 et seq.
Vermont: 9 V.S.A. § 4601 et seq.
Virgin Islands: 11 V.I.C. § 601 et seq.
Virginia: Va. Code Ann. § 13.1-501 et seq.
Washington: Rev. Code Wash. (ARCW) § 21.20.005 et seq.
West Virginia: W. Va. Code § 32-1-101 et seq.
Wisconsin: Wis. Stat. § 551.101 et seq.
Wyoming: Wyo. Stat. § 17-4-101 et seq.

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State § 1 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), Securities Regulation, Forms 11 et seq. (state regulation).

Practice References. Federal Securities Act of 1933 (Matthew Bender).

Federal Securities Exchange Act of 1934 (Matthew Bender).

Securities Primary Law Sourcebook (Matthew Bender).

A.A. Sommer, Jr., Securities Law Techniques (Matthew Bender).

Robert N. Rapp, Blue Sky Regulation (Matthew Bender).

§ 75-71-102. Definitions.

In this chapter, unless the context otherwise requires:

(1) "Administrator" means the Secretary of State.

(2) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. The term does not include an individual excluded by rule adopted or order issued under this chapter. The

term does not include an associated person of an issuer who is deemed not to be a broker under Securities and Exchange Commission Rule 3a4-1.

(3) "Bank" means:

(A) A banking institution organized under the laws of the United States;

(B) A member bank of the Federal Reserve System;

(C) Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 USC Section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

(D) A receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B) or (C).

(4) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) An agent;

(B) An issuer;

(C) A bank or savings institution if its activities as a broker-dealer are limited to those specified in subsection 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 USC Section 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 USC Section 78c(a)(4));

(D) An international banking institution; or

(E) A person excluded by rule adopted or order issued under this chapter.

(5) "Depository institution" means:

(A) A bank; or

(B) A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i) An insurance company or other organization primarily engaged in the business of insurance;

(ii) A Morris Plan bank; or

(iii) An industrial loan company that is not an "insured depository institution" as defined in Section 3(c)(2) of the Federal Deposit Insurance Act, 12 USC 1813(c)(2), or any successor federal statute.

(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 USC Section 77r(b)) or rules or regulations adopted pursuant to that provision.

(8) "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator.

(9) "Fraud," "deceit," and "defraud" are not limited to common law deceit.

(10) "Guaranteed" means guaranteed as to payment of all principal and all interest.

(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) A depository institution or international banking institution;

(B) An insurance company;

(C) A separate account of an insurance company;

(D) An investment company as defined in the Investment Company Act of 1940;

(E) A broker-dealer registered under the Securities Exchange Act of 1934;

(F) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of Ten Million Dollars ($10,000,000.00) or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(G) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of Ten Million Dollars ($10,000,000.00) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(H) A trust, if it has total assets in excess of Ten Million Dollars ($10,000,000.00), its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or

(G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) An organization described in Section 501(c)(3) of the Internal Revenue Code (26 USC Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of Ten Million Dollars ($10,000,000.00);

(J) A small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 USC Section 681(c)) with total assets in excess of Ten Million Dollars ($10,000,000.00);

(K) A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 USC Section 80b-2(a)(22)) with total assets in excess of Ten Million Dollars ($10,000,000.00);

(L) A federal covered investment adviser acting for its own account;

(M) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 CFR 230.144A);

(N) A "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 CFR 240.15a-6);

(O) Any other person, other than an individual, of institutional character with total assets in excess of Ten Million Dollars ($10,000,000.00) not organized for the specific purpose of evading this chapter; or

(P) Any other person specified by rule adopted or order issued under this chapter.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that

holds itself out as providing investment advice to others for compensation. The term does not include:

(A) An investment adviser representative;

(B) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) A federal covered investment adviser;

(F) A bank or savings institution;

(G) Any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or

(H) Any other person excluded by rule adopted or order issued under this chapter.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) Performs only clerical or ministerial acts;

(B) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 USC Section 80b-3a) and is:

(i) An "investment adviser representative" as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 USC Section 80b-3a); or

(ii) Not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 USC Section 80b-2(a)(25)); or

(D) Is excluded by rule adopted or order issued under this chapter.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 USC 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association or organization, whether incorporated or unincorporated; joint venture; government; governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor act" means the act repealed by Section 2, Chapter 528, Laws of 2009.

(23) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or

investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) "Record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) A gift of assessable stock involving an offer and sale; and

(C) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term includes both a certificated and an uncertificated security. The term does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or other specified period; or an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974. An "investment contract" includes, among other contracts, an investment in a limited partnership, an interest in a limited liability company, an investment in a viatical settlement or similar agreement, and an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

(29) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(30) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach or logically associate with the record an electronic symbol, sound, or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Federal Aspects — Employee Retirement Income Security Act of 1974, 29 USCS § 1001 et seq.

Federal Deposit Insurance Act, 12 USCS § 1811 et seq.

Investment Advisers Act of 1940, 15 USCS § 80b-1 et seq.

Investment Company Act of 1940, 15 USCS § 80a-1 et seq.

Rule 144A(a)(1) adopted under the Securities Act of 1933, 17 CFR 230.144A.

Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934, 17 CFR 240.15a-6.

Section 1 of Public Law 87-722, 12 USCS § 92a.

Section 301(c) of the Small Business Investment Act of 1958, 15 USCS § 681(c).

Section 501(c)(3) of the Internal Revenue Code, 26 USCS § 501(c)(3).

Securities Act of 1933, 15 USCS § 77a et seq.

Securities Exchange Act of 1934, 15 USCS § 78a et seq.

For additional federal statutes referenced in this chapter, see § 75-71-103.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former Law.
6. Under former § 75-71-5.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 75-71-5.

The Blue Sky Laws of the state were inapplicable where incorporators received no compensation for their work in procuring stock subscribers to corporation to be subsequently formed inasmuch as they were not agents and were not liable to the subscribers for failure to comply therewith. Guynn v. Shulters, 223 Miss. 232, 78 So. 2d 114, 50 A.L.R.2d 1088 (1955), error overruled 223 Miss. 232, 78 So. 2d 793, 50 A.L.R.2d 1088.

A corporation cannot limit the authority of its agent in the sale of its stock. New Amsterdam Cas. Co. v. Wood, 213 Miss. 499, 57 So. 2d 141 (1952).

Annuity policies, though not life insurance policies, are not subject to the requirements of the Blue Sky Act, but, being such as life insurance companies are authorized to issue, are subject to the provisions of the statute regulating the business of life insurance companies. Hamilton v. Penn Mut. Life Ins. Co., 196 Miss. 345, 17 So. 2d 278 (1944).

Foreign corporation issuing stock, but without selling or offering for sale any of it in Mississippi, was not an 'investment company' within Blue Sky Law, though resident who owned stock sold it to another within state. White v. Stewart, 166 Miss. 694, 145 So. 747 (1933).

Buyer's suit to rescind against brokers under Blue Sky Law must be brought under section relating to "dealers," not under that relating to "investment companies." White v. Stewart, 166 Miss. 694, 145 So. 747 (1933).

RESEARCH REFERENCES

ALR. What gives rise to right of rescission under state blue sky laws. 52 A.L.R.5th 491.

What constitutes recklessness sufficient to show necessary element of scienter in civil action for damages under § 10(b) of Securities Exchange Act of 1934 (15 USCS § 78j(b)) and Rule 10b-5 of the Securities and Exchange Commission. 49 A.L.R. Fed. 392.

Partnership and joint venture interests as securities within meaning of federal Securities Act of 1933 (15 USCS § 77a et seq.) and Securities Exchange Act of 1934 (15 USCS § 78a et seq). 58 A.L.R. Fed. 408.

Commodity futures contract or account as included in meaning of 'security' as defined in § 3(a)(10) of the Securities Exchange Act of 1934 (15 USCS § 78c(a)(10). 58 A.L.R. Fed. 616.

Exercise of stock appreciation rights, or sale of stock options to issuer as purchase or sale of securities within meaning of short-swing profits provisions of § 16(b) of Securities Exchange Act of 1934 (15 USCS § 78(b)). 61 A.L.R. Fed. 263.

Effect of asset freeze obtained by Securities and Exchange Commission on attorney's fees paid or owed by company subject to freeze. 161 A.L.R. Fed. 233.

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 19 et seq., 44.

Law Reviews. Muddy Waters, Blue Skies: Civil Liability Under the Mississippi Securities Act, 70 Miss. L.J. 683 (2000).

§ 75-71-103. References to federal statutes.

"Securities Act of 1933" (15 USC Section 77a et seq.), "Securities Exchange Act of 1934" (15 USC Section 78a et seq.), "Public Utility Holding Company Act of 1935" (15 USC Section 79 et seq.), "Investment Company Act of 1940" (15 USC Section 80a-1 et seq.), "Investment Advisers Act of 1940" (15 USC Section 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 USC Section 1001 et seq.), "National Housing Act" (12 USC Section 1701 et seq.), "Commodity Exchange Act" (7 USC Section 1 et seq.), "Internal Revenue Code" (26 USC Section 1 et seq.), "Securities Investor Protection Act of 1970" (15 USC Section 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 USC Section 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 USC Section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on January 1, 2000, or as later amended.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-103 [Laws, 1981, ch. 521, § 415, eff from and after July 1, 1981; Repealed by Laws, 2009, ch. 528, § 2, effective from and after January 1, 2010] pertained to the construction of the chapter.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010.'"

§ 75-71-104. References to federal agencies.

A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-105. Electronic records and signatures.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of that act (15 USC Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 USC Section 7003(b)). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or order issued under this chapter, in a manner consistent with Section 104(a) of that act (15 USC Section 7004(a)).

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-105 [Laws, 1981, ch. 521, § 401; Laws, 1982, ch. 377, § 1; Laws, 1987, ch. 477, § 1; Laws, 1990, ch. 352, § 1; Laws, 1997, ch. 480, § 1; Laws, 2000, ch. 323, § 12, effective from and after July 1, 2000; Repealed by Laws, 2009, ch. 528, § 2, effective from and after January 1, 2010] provided definitions of terms used in the chapter. Similar present provisions are found in § 75-71-102.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Federal Aspects — Electronic Signatures in Global and National Commerce Act, 15 USCS § 7001 et seq.

§§ 75-71-107 through 75-71-127. Repealed.

Repealed by Laws, 2009, ch. 528, § 2, effective from and after January 1, 2010.

§ 75-71-107. [Laws, 1981, ch. 521, § 406; Laws, 1995, ch. 309, § 1, eff from and after passage (approved March 8, 1995).]

§ 75-71-109. [§ 75-71-109. [Laws, 1981, ch. 521, § 412; Laws, 1987, ch. 477, § 2; Laws, 1997, ch. 480, § 2, eff from and after passage (approved March 27, 1997).]

§ 75-71-111. [§ 75-71-111. [Laws, 1981, ch. 521, § 413; Laws, 1987, ch. 477, § 3; Laws, 1995, ch. 309, § 2, eff from and after passage (approved March 8, 1995).]

§ 75-71-113. [Laws, 1981, ch. 521, § 403; Laws, 1997, ch. 480, § 3; Laws, 2000, ch. 473, § 19, eff from and after July 1, 2000.]

§ 75-71-115. [Laws, 1981, ch. 521, § 404, eff from and after July 1, 1981.]

§ 75-71-117. [Laws, 1981, ch. 521, § 405, eff from and after July 1, 1981.]

§ 75-71-119. [Laws, 1981, ch. 521, § 414; Laws, 1990, ch. 352, § 2; Laws, 1997, ch. 480, § 4, eff from and after July 1, 1997.]

§ 75-71-121. [Laws, 1981, ch. 521, § 418, eff from and after July 1, 1981.]

§ 75-71-123. [Laws, 1981, ch. 521, § 418, eff from and after July 1, 1981.]

§ 75-71-125. [Laws, 1981, ch. 521, § 418, eff from and after July 1, 1981.]

§ 75-71-127. [Laws, 1981, ch. 521, § 418, eff from and after July 1, 1981.]

Editor's Note — Former § 75-71-107 pertained to the administration of the chapter. Present provisions relating to administration can be found in § 75-71-601 et seq.

Former § 75-71-109 pertained to rules, forms, orders and hearings. Present similar provisions are found in § 75-71-605.

Former § 75-71-111 pertained to administrative files and opinions. Present similar provisions are found in § 75-71-606.

Former § 75-71-113 pertained to filing of sales and advertising literature. Present similar provisions are found in § 75-71-504.

Former § 75-71-115 pertained to misleading filings. Present similar provisions are found in § 75-71-505.

Former § 75-71-117 pertained to unlawful representations concerning registration or exemption. Present similar provisions are found in § 75-71-506.

Former § 75-71-119 pertained to chapter applicability. Present similar provisions are found in § 75-71-610.

Former § 75-71-121 pertained to the effect of chapter on pending proceedings or existing rights of action. Present similar provisions are found in § 75-71-701.

Former § 75-71-123 pertained to the effect of the chapter on registrations under prior law. Present similar provisions are found in § 75-71-701.

Former § 75-71-125 pertained to the effect of the chapter on offerings or sales begun under prior exemptions. Present similar provisions are found in § 75-71-701.

Former § 75-71-127 pertained to the effect of the chapter on proceedings for judicial review of administrative orders. Present provisions relating to administrative enforcement are found in § 75-71-604.

ARTICLE 2.

EXEMPTIONS FROM REGISTRATION OF SECURITIES.

SEC.
75-71-201. Exempt securities.
75-71-202. Exempt transactions.
75-71-203. Additional exemptions and waivers.
75-71-204. Denial, suspension, revocation, condition, or limitation of exemptions.
75-71-205, 75-71-207. Repealed

§ 75-71-201. Exempt securities.

The following securities are exempt from the requirements of Sections 75-71-301 through 75-71-306 and 75-71-504:

(1) A security, including a revenue obligation or a separate security as defined in Rule 131 (17 CFR 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; a state; a political subdivision of a state; a public authority, agency, or instrumentality of one or more states; a political subdivision of one or more states; or a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing;

(2) A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(3) A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) An international banking institution;

(B) A banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 USC Section 92a); or

(C) Any other depository institution, unless by rule or order the administrator proceeds under Section 75-71-204;

(4) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state;

(5) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(A) Regulated in respect to its rates and charges by the United States or a state;

(B) Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or

(C) A public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

(6) A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 USC Section 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an

index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 USC Section 78i(b));

(7) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 USC Section 80a-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to (B) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

(A) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule;

(B) To file a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Section 75-71-611, and grounds for denial or suspension of the exemption; or

(C) To register under Section 75-71-304;

(8) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative;

(9) An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 USC Section 77r(b)(1)); and

(10) Any oil, gas or mineral lease, working interest, mineral interest or mineral estate, royalty interest or royalty estate, overriding royalty, or an oil

payment or net profit interest, regardless of how said interests may be created, provided any vested estate in any working interest shall not be less than one-two-hundredth (1/200) of the whole working interest, and any mineral lease and royalty sales made in exchange for labor, material and machinery used in drilling an oil or gas well.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-201 [Laws, 1981, ch. 521, § 402; Laws, 1982, ch. 377, § 2, effective from and after passage (approved March 22, 1982; Repealed by Laws, 2009, ch. 582, § 2, effective from and after January 1, 2010] pertained to exempt securities. Similar provisions are found in the section above.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Denial, suspension of application of, conditioning, limitation or revocation of exemption created under paragraphs (3)(C), (7) or (8) of this section, see § 75-71-204.

Federal Aspects — Investment Company Act of 1940, 15 USCS § 80a-1 et seq.

Public Utility Holding Company Act of 1935, 15 USCS § 79 et seq.

Section 1 of Public Laws 87-722, 12 USCS § 92a.

Securities Act of 1933, 15 USCS § 77a et seq.

Securities Exchange Act of 1934, 15 USCS § 78a et seq.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former Law.
6. Under former § 75-71-51.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 75-71-51.

The sale of a negotiable promissory note by one who had not first obtained a certificate of exemption from the Secretary of State did not violate the blue sky laws. State v. Russell, 358 So. 2d 409 (Miss. 1978).

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation--State §§ 110 through 115.

§ 75-71-202. Exempt transactions.

The following transactions are exempt from the requirements of Sections 75-71-301 through 75-71-306 and 75-71-504. The transactions listed below are self-actuating, are not conditioned by rule and require no pre-approval of the administrator, unless otherwise indicated below:

(1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

(2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:

(A) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) The security is sold at a price reasonably related to its current market price;

(C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(D) A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) A description of the business and operations of the issuer;

(ii) The names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) An audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) An audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(E) Any one (1) of the following requirements is met:

(i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System;

(ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years; or

(iv) The issuer of the security has total assets of at least Two Million Dollars ($2,000,000.00) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

(3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

(4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 USC 78m or 78o(d));

(5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:

(A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or

(B) Has a fixed maturity or a fixed interest or dividend, if:

(i) A default has not occurred during the current fiscal year or within the three (3) previous fiscal years or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;

(7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;

(8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of One Hundred Million Dollars ($100,000,000.00) acting in the exercise of discretionary authority in a signed record for the account of others;

(9) The following transaction requires approval of the administrator: a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or

the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing;

(10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) A general solicitation or general advertisement of the transaction is not made; and

(C) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent;

(12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(13) A sale or offer to sell to:

(A) An institutional investor;

(B) A federal covered investment adviser; or

(C) Any other person exempted by rule adopted or order issued under this chapter;

(14) A sale or offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which:

(A) Not more than ten (10) purchasers are present in this state during any twelve (12) consecutive months, other than those designated in paragraph (13);

(B) A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state; and

(D) The issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph (13), are purchasing for investment;

(15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;

(16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 CFR 230.165); and

(B) A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange

Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

(17) An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(A) A registration statement has been filed under this chapter, but is not effective;

(B) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this chapter; and

(C) A stop order of which the offeror is aware has not been issued by the administrator under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

(19) A rescission offer, sale, or purchase under Section 75-71-510;

(20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;

(21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(B) Family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) Former employees, directors, general partners, trustees, if the issuer is a business trust, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations;

(22) A transaction involving:

(A) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) The solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 CFR 230.162); or

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with Section 75-71-604, the administrator, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Denial, suspension of application of, conditioning, limitation or revocation of exemption created under this section, see § 75-71-204.

Exemption of individual who represents issuer, and who effects transactions in issuer's securities exempted by this section, from requirement to register as agent, see § 75-71-402.

Federal Aspects — Investment Company Act of 1940, 15 USCS § 80a-1 et seq.

Rule 162 adopted under the Securities Act of 1933, 17 CFR 230.162.

Securities Act of 1933, 15 USCS § 77a et seq.

Securities Exchange Act of 1934, 15 USCS § 78a et seq.

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 116 through 129.

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Practice References. A.A. Sommer, Jr., Federal Securities Act of 1933 (Matthew Bender).

A.A. Sommer, Jr., Federal Securities Exchange Act of 1934 (Matthew Bender).

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Sowards and Hirsch, Blue Sky Regulation (Matthew Bender).

§ 75-71-203. Additional exemptions and waivers.

A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of Sections 75-71-301 through 75-71-306 and 75-71-504; and an order under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under Sections 75-71-201 and 75-71-202.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-203 [Laws, 1981, ch. 521, § 402; Laws, 1985, ch. 381, § 10; Laws, 1987, ch. 477, § 4; Laws, 2001, ch. 437, § 1, eff from and after July 1, 2001; Repealed by Laws, 2009, ch. 582, § 2, effective from and after January 1, 2010] pertained to exempt transactions. Present similar provisions are found in § 75-71-202

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Denial, suspension of application of, condition, limitation or revocation of certain exemptions created under this section, see § 75-71-204.

§ 75-71-204. Denial, suspension, revocation, condition, or limitation of exemptions.

(a) **Enforcement related powers.** Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under Section 75-71-201(3)(C), Section 75-71-201(7) or Section 75-71-201(8) or Section 75-71-202 or an exemption or waiver created under Section 75-71-203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in Section 75-71-306 or Section 75-71-604 and only prospectively.

(b) **Knowledge of order required.** A person does not violate Section 75-71-301, Sections 75-71-303 through 75-71-306, Section 75-71-504, or Section 75-71-510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§§ 75-71-205, 75-71-207. Repealed.

Repealed by Laws, 2009, ch. 528, § 2, effective from and after January 1, 2010.

§ 75-71-205. [Laws, 1981, ch. 521, § 402, eff from and after July 1, 1981.]
§ 75-71-207. [Laws, 1981, ch. 521, § 402, eff from and after July 1, 1981.]

Editor's Note — Former § 75-1-205 pertained to the denial or revocation of specific exemptions, notice, hearings, and summary orders. Present similar provisions are found in § 75-71-204.

Former § 75-71-207 pertained to burden of proving exemption or exception. Present similar provisions are found in § 75-71-503.

ARTICLE 3.

REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES.

SEC.	
75-71-301.	Securities registration requirement.
75-71-302.	Notice filing.
75-71-303.	Securities registration by coordination.
75-71-304.	Securities registration by qualification.
75-71-305.	Securities registration filings.
75-71-306.	Denial, suspension, and revocation of securities registration.
75-71-307.	Waiver and modification.
75-71-309.	Repealed.
75-71-310.	Filing fees.
75-71-311 through 75-71-333.	Repealed

§ 75-71-301. Securities registration requirement.

It is unlawful for a person to offer or sell a security in this state unless:

(1) The security is a federal covered security;

(2) The security, transaction, or offer is exempted from registration under Sections 75-71-201 through 75-71-203; or

(3) The security is registered under this chapter.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-301 [Laws, 1981, ch. 521, § 201; Laws, 1987, ch. 477, § 5, effective from and after July 1, 1987; Repealed by Laws, 2009, ch. 582, § 2, effective from and after January 1, 2010] related to registration requirements for broker-dealers and agents. Present similar provisions are found in §§ 75-71-401 and 75-71-402.

Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Exemption of certain securities from the requirements of this section, see § 75-71-201.

Exemption of certain transactions from the requirements of this section, see § 75-71-202.

Registration of security by coordination, see § 75-71-303.

Registration of security by qualification, see § 75-71-304.

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 67 through 80.

§ 75-71-302. Notice filing.

(a) **Required filing of records.** — With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 USC Section 77r(b)(2)), that is not otherwise exempt under Sections 75-71-201 through 75-71-203, a rule adopted or order issued under this chapter may require the filing of any or all of the following records:

(1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process complying with Section 75-71-611 signed by the issuer and the payment of a fee as set forth in Section 75-71-310; and

(2) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933.

(b) **Notice filing effectiveness and renewal.** — A notice filing under subsection (a) is effective for one (1) year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this chapter to be filed and by paying a renewal fee of the amount set forth at Section 75-71-310. A previously filed consent to service of process complying with Section 75-71-611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) **Notice filings for federal covered securities under Section 18(b)(4)(E).** — With respect to a security that is a federal covered security under Section 18(b)(4)(E) of the Securities Act of 1933 (15 USC Section 77r(b)(4)(E)), a rule under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with Section 75-71-611 signed by the issuer not later than fifteen (15) days after the first sale of the federal covered security in this state and the payment of a fee as set forth in Section 75-71-310; and the payment of an additional fee the amount set forth in Section 75-71-310 for any late filing.

(d) **Stop orders.** — Except with respect to a federal security under Section 18(b)(1) of the Securities Act of 1933 (15 USC Section 77r(b)(1)), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

(e) **Notice filings for other federal covered securities.** — Unless the administrator provides otherwise by rule, any other federal covered security may be offered and sold in this state in reliance on its being a federal covered security without the filing of a notice or the payment of a fee. A rule under this chapter may require a notice filing with respect to other federal covered securities by or on behalf of an issuer and the payment of a fee set forth in Section 75-71-310; and the payment of an additional late fee in the amount set forth in Section 75-71-310 for any late filing.

SOURCES: Laws, 2009, ch. 528, § 1; Laws, 2016, ch. 321, § 1, eff from and after July 1, 2016.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Amendment Notes — The 2016 amendment substituted "Section 18(b)(4)(E)" for "Section 18(b)(4)(D)" everywhere it appears in (c); and added (e).

Cross References — Exemption of certain securities from the requirements of this section, see § 75-71-201.

Exemption of certain transactions from the requirements of this section, see § 75-71-202.

Administrator authorized to waive or modify requirements of this section, see § 75-71-307.

Filing and renewal fees for notice filing with respect to federal covered security described in subsection (a) of this section, see § 75-71-310.

Federal Aspects — Securities Act of 1933, 15 USCS § 77a et seq.

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 81 through 83.

§ 75-71-303. Securities registration by coordination.

(a) **Registration permitted.** A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) **Required records.** A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in Section 75-71-305 and a consent to service of process complying with Section 75-71-611:

(1) A copy of the latest form of prospectus filed under the Securities Act of 1933;

(2) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter;

(3) Copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the administrator; and

(4) An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.

(c) **Conditions for effectiveness of registration statement.** A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) A stop order under subsection (d) or Section 75-71-306 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under Section 75-71-306; and

(2) The registration statement has been on file for at least twenty (20) days or a shorter period provided by rule adopted or order issued under this chapter.

(d) **Notice of federal registration statement effectiveness.** The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telephone, facsimile or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) **Effectiveness of registration statement.** If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telephone, facsimile or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under Section 75-71-306. The notice by the administrator does not preclude the institution of such a proceeding.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-303 [Laws, 1981, ch. 521, § 201; Laws, 1987, ch. 477, § 6; Laws, 1990, ch. 352, § 3; Laws, 1997, ch. 480, § 5, effective from and after passage (approved March 27, 1997); Repealed by Laws, 2009, ch. 582, § 2, effective from and after January 1, 2010.] pertained to registration requirements for investment advisers and investment adviser representatives. Present similar provisions are found in §§ 75-71-403 and 75-71-404.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Exemption of certain securities from the requirements of this section, see § 75-71-201.

Exemption of certain transactions from the requirements of this section, see § 75-71-202.

Registration of security by qualification, see § 75-71-304.

Administrator authorized to waive or modify requirements of this section, see § 75-71-307.

Federal Aspects — Securities Act of 1933, 15 USCS § 77a et seq.

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 84 through 86.

§ 75-71-304. Securities registration by qualification.

(a) **Registration permitted.** A security may be registered by qualification under this section.

(b) **Required records.** A registration statement under this section must contain the information or records specified in Section 75-71-305, a consent to service of process complying with Section 75-71-611, and, if required by rule adopted under this chapter, the following information or records:

(1) With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five (5) years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three (3) years or proposed to be effected;

(3) With respect to persons covered by paragraph (2), the aggregate sum of the remuneration paid to those persons during the previous twelve (12) months and estimated to be paid during the next twelve (12) months,

directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

(4) With respect to a person owning of record or owning beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) other than the person's occupation;

(5) With respect to a promoter, if the issuer was organized within the previous three (3) years, the information or records specified in paragraph (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three (3) years or proposed to be effected; and a statement of the reasons for making the offering;

(7) The capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two (2) years or is obligated to issue its securities;

(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(9) The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the

sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and by any person that holds or will hold ten percent (10%) or more in the aggregate of those options;

(11) The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two (2) years, and a copy of the contract;

(12) A description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(13) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with Section 75-71-202(17)(B);

(14) A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) A balance sheet of the issuer as of a date within four (4) months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the

purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) Any additional information or records required by rule adopted or order issued under this chapter.

(c) **Conditions for effectiveness of registration statement.** A registration statement under this section becomes effective thirty (30) days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) A stop order is not in effect and a proceeding is not pending under Section 75-71-306;

(2) The administrator has not issued an order under Section 75-71-306 delaying effectiveness; or

(3) The applicant or registrant has not requested that effectiveness be delayed.

(d) **Delay of effectiveness of registration statement.** The administrator may delay effectiveness once for not more than ninety (90) days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination by telephone, facsimile, or electronic means and promptly confirms this notice by a record. The administrator may also delay effectiveness for a further period of not more than thirty (30) days if the administrator determines that the delay is necessary or appropriate and promptly notifies the applicant or registrant of that determination by telephone, facsimile, or electronic means and promptly confirms this notice by a record.

(e) **Prospectus distribution may be required.** A rule adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(1) The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) The confirmation of a sale made by or for the account of the person;

(3) Payment pursuant to such a sale; or

(4) Delivery of the security pursuant to such a sale.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Exemption of certain securities from the requirements of this section, see § 75-71-201.

Exemption of certain transactions from the requirements of this section, see § 75-71-202.

Registration of security by coordination, see § 75-71-303.

Administrator authorized to waive or modify requirements of subsection (b) of this section, see § 75-71-307.

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 87 through 96.

§ 75-71-305. Securities registration filings.

(a) **Who may file.** A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

(b) **Filing fee.** A person filing a registration statement shall pay a filing fee as set forth in Section 75-71-310. This fee shall be nonrefundable except as provided in Section 75-71-310.

(c) **Status of offering.** A registration statement filed under Section 75-71-303 or 75-71-304 must specify:

(1) The amount of securities to be offered in this state;

(2) The states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) **Incorporation by reference.** A record filed under this chapter or the predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) **Nonissuer distribution.** In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or Section 75-71-304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) **Escrow and impoundment.** A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five (5) years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the administrator may not reject a depository institution solely because of its location in another state.

(g) **Form of subscription.** A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than five (5) years.

(h) **Effective period.** Except while a stop order is in effect under Section 75-71-306, a registration statement is effective for one (1) year after its effective date, or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one (1) year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

(i) **Periodic reports.** While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) **Posteffective amendments.** A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee calculated in the manner specified in Section 75-71-310, with respect to the additional securities proposed to be offered. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one (1) year after the date of the sale, the amendment is filed and the additional registration fee is paid.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-305 [Laws, 1981, ch. 521, § 201; Laws, 1987, ch. 477, § 7; Laws, 1997, ch. 480, § 6, effective from and after passage (approved March 27, 1997); Repealed by Laws, 2009, ch. 582, § 2, effective from and after January 1, 2010] pertained to the expiration of registration or notice filings. Present provisions relating to the effective period for notice filings are found in 75-71-302; present provisions relating to the effective period of registration statements are found in § 75-71-305.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Exemption of certain securities from the requirements of this section, see § 75-71-201.

Exemption of certain transactions from the requirements of this section, see § 75-71-202.

Definition of predecessor act, see § 75-71-102(22).

Administrator authorized to waive or modify requirement of information or record in registration statement or in periodic report filed pursuant to subsection (i) of this section, see § 75-71-307.

Filing fee for registration statement and amendment to registration statement under this section, see § 75-71-310.

§ 75-71-306. Denial, suspension, and revocation of securities registration.

(a) **Stop orders.** The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that:

(1) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under Section 75-71-305(j) as of its effective date, or a report under Section 75-71-305(i), is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) This chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the administrator may not institute a proceeding against an effective registration statement under this subsection (a) more than one (1) year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this subsection (a) on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) The issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) With respect to a security sought to be registered under Section 75-71-303, there has been a failure to comply with the undertaking required by Section 75-71-303(b)(4);

(6) The applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected; or

(7) The offering:

(A) Will work or tend to work a fraud upon purchasers or would so operate;

(B) Has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(C) Is being made on terms that are unfair, unjust, or inequitable.

(b) **Enforcement of subsection (a)(7).** To the extent practicable, the administrator by rule adopted or order issued under this chapter shall publish standards that provide notice of conduct that violates subsection (a)(7).

(c) **Institution of stop order.** The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within thirty (30) days after the registration statement became effective.

(d) **Summary process.** The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator, in accordance with Section 75-71-611, shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within thirty (30) days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) **Procedural requirements for stop order.** A stop order may not be issued under this section without:

(1) Appropriate notice, in accordance with Section 75-71-611, to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) An opportunity for hearing; and

(3) Findings of fact and conclusions of law in a record in accordance with the administrative hearing procedures set forth in the rules.

(f) **Modification or vacation of stop order.** The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Exemption of certain securities from the requirements of this section, see § 75-71-201.

Exemption of certain transactions from the requirements of this section, see § 75-71-202.

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 97 through 105.

§ 75-71-307. Waiver and modification.

The administrator may waive or modify, in whole or in part, any or all of the requirements of Sections 75-71-302, 75-71-303, and 75-71-304(b) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to Section 75-71-305(i).

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-307 [Laws, 1981, ch. 521, § 202; Laws, 1987, ch. 477, § 8; Laws, 1990, ch. 352, § 4; Laws, 1997, ch. 480, § 7, effective from and after passage (approved March 27, 1997); Repealed by Laws, 2009, ch. 582, § 2, effective January 1, 2010] pertained to the application for registration by broker-dealers, agents, investment advisers, investment adviser representatives, and federal covered investment advisers. Present provisions pertaining to registration of broker-dealers, agents, investment advisers, investment adviser representatives and federal covered investment advisers are now found in §§ 75-71-401, 75-71-402, 75-71-403, and 75-71-404, respectively.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-309. Repealed.

Repealed by Laws, 2009, ch. 582, § 2, effective from and after January 1, 2010.

§ 75-71-309. [Laws, 1981, ch. 521, § 202, eff from and after July 1, 1981.]

Editor's Note — Former § 75-71-309 pertained to the effective date of registrations. Present provisions pertaining to effectiveness are found in § 75-71-406.

§ 75-71-310. Filing fees.

(a) **Required fees for notice filing for federal covered securities under Section 18(b)(2).** — The initial filing fee for a notice filing with respect to a federal covered security described in subsection (a) of Section 75-71-302 is one-tenth (1/10) of one percent (1%) of the dollar amount of the offering to be registered with a minimum fee of Three Hundred Dollars ($300.00) and a maximum fee of One Thousand Dollars ($1,000.00). The renewal fee for a notice filing with respect to a federal covered security described in subsection (a) of Section 75-71-302 is one-tenth (1/10) of one percent (1%) of the amount sold in the state with a minimum fee of Three Hundred Dollars ($300.00) and a maximum fee of One Thousand Dollars ($1,000.00).

(b) **Required fees for notice filings for federal covered securities.** — The filing fee for a notice filing with respect to a security that is a federal covered security under the Securities Act of 1933 (15 USC Section 77r) is Three Hundred Dollars ($300.00). The fee for a late filing, which is an additional fee, is one percent (1%) of the dollar amount of the offering sold in the state up to a maximum of Five Thousand Dollars ($5,000.00).

(c) **Required fees for securities registration filings under Section 75-71-305.** —

(1) The filing fee for a registration statement under Section 75-71-305 is one-tenth (1/10) of one percent (1%) of the dollar amount of the offering to be registered with a minimum fee of Three Hundred Dollars ($300.00) and a maximum fee of One Thousand Dollars ($1,000.00).

(2) The filing fee for an amendment to a registration statement under Section 75-71-305 to register additional securities shall be calculated in the manner specified in paragraph (1) with respect to the additional securities proposed to be offered.

SOURCES: Laws, 2009, ch. 528, § 1; Laws, 2016, ch. 321, § 2, eff from and after July 1, 2016.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Amendment Notes — The 2016 amendment, in (b), deleted "under Section 18(b)(4)(D)" from the end of the subsection heading, and in the first sentence, deleted "Section 18(b)(4)(D) of" preceding "the Securities Act of 1933 (15 USC Section 77r" and deleted "(b)(4)(D)" thereafter.

Federal Aspects — Securities Act of 1933 generally, 15 USCS § 77a et seq.

§§ 75-71-311 through 75-71-333. Repealed.

Repealed by Laws, 2009, ch. 582, § 2, effective from and after January 1, 2010.

§ 75-71-311 [Laws, 1981, ch. 521, § 202; Laws, 1990, ch. 352, § 5, eff from and after passage (approved March 12, 1990)].

§ 75-71-313 [Laws, 1981, ch. 521, § 202; Laws, 1985, ch. 381, § 11; Laws, 1987, ch. 477, § 9; Laws, 1990, ch. 352, § 6; Laws, 1997, ch. 480, § 8, eff from and after passage (approved March 27, 1997)].

§ 75-71-315 [Laws, 1981, ch. 521, § 202, eff from and after July 1, 1981].

§ 75-71-317 [Laws, 1981, ch. 521, § 202; Laws, 1997, ch. 480, § 9, eff from and after passage (approved March 27, 1997)].

§ 75-71-319 [Laws, 1981, ch. 521, § 202; Laws, 1987, ch. 477, § 10; Laws, 1997, ch. 480, § 10, eff from and after passage (approved March 27, 1997)].

§ 75-71-321 [Laws, 1981, ch. 521, § 204; Laws, 1990, ch. 352, § 7; Laws, 2001, ch. 437, § 2, eff from and after July 1, 2001].

§ 75-71-323 [Laws, 1981, ch. 521, § 204; Laws, 1987, ch. 477, § 11; Laws, 1990, ch. 352, § 8, eff from and after passage (approved March 12, 1990)].

§ 75-71-325 [Laws, 1981, ch. 521, § 204; Laws, 1990, ch. 352, § 9, eff from and after passage (approved March 12, 1990)].

§ 75-71-327 [Laws, 1981, ch. 521, § 204; Laws, 1990, ch. 352, § 10, eff from and after passage (approved March 12, 1990)].

§ 75-71-329 [Laws, 1981, ch. 521, § 204; Laws, 1990, ch. 352, § 11, eff from and after passage (approved March 12, 1990)].

§ 75-71-331 [Laws, 1981, ch. 521, § 204; Laws, 1990, ch. 352, § 12, eff from and after passage (approved March 12, 1990)].

§ 75-71-333 [Laws, 1981, ch. 521, § 203; Laws, 1997, ch. 480, § 11, eff from and after passage (approved March 27, 1997)].

Editor's Note — Former §75-71-311 provided that registration of broker-dealer constitutes registration of agent and registration of investment adviser constitutes registration of investment adviser representative. Present provisions relating to the registration of broker-dealers, agents, investment advisers, and investment adviser representatives are found in §§ 75-71-401 through 75-71-404.

Former §75-71-313 pertained to registration fees. Present similar provisions are found in § 75-71-410.

Former § 75-71-315 pertained to registration of successors to broker-dealers or investment advisers. Present similar provisions are found in § 75-71-407.

Former § 75-71-317 pertained to minimum capital rules. Present similar provisions are found in § 75-71-411.

Former § 75-71-319 pertained to the requirement to post bonds. Present similar provisions are found in § 75-71-411.

Former § 75-71-321 pertained to the denial, suspension or revocation of registration and the grounds therefor. Present similar provisions are found in § 75-71-412.

Former § 75-71-323 provided additional provisions governing denial, suspension or revocation of registration for lack of qualifications.

Former § 75-71-325 pertained to summary postponement or suspension of registration. Present similar provisions are found in § 75-71-412.

Former § 75-71-327 pertained to the cancellation of a registration or application. Present similar provisions are found in § 75-71-408.

Former § 75-71-329 pertained to withdrawal from registration. Present similar provisions are found in § 75-71-409.

Former § 75-71-331 pertained to notice, hearing and written findings and conclusions.

Former § 75-71-333 pertained to postregistration requirements. Present similar provisions are found in § 75-71-411.

ARTICLE 4.

BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS.

SEC.
75-71-401. Broker-dealer registration requirement and exemptions.
75-71-402. Agent registration requirement and exemptions.
75-71-403. Investment adviser registration requirement and exemptions.
75-71-404. Investment adviser representative registration requirement and exemptions.
75-71-405. Federal covered investment adviser notice filing requirement.
75-71-406. Registration by broker-dealer, agent, investment adviser, and investment adviser representative.

75-71-407. Succession and change in registration of broker-dealer or investment adviser.
75-71-408. Termination of employment or association of agent and investment adviser representative and transfer of employment or association.
75-71-409. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative.
75-71-410. Fees.
75-71-411. Postregistration requirements.
75-71-412. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.
75-71-413 through 75-71-431. Repealed

§ 75-71-401. Broker-dealer registration requirement and exemptions.

(a) **Registration requirement.** It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) **Exemptions from registration.** The following persons are exempt from the registration requirement of subsection (a):

(1) A broker-dealer without a place of business in this state if its only transactions effected in this state are with:

(A) The issuer of the securities involved in the transactions;

(B) A broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;

(C) An institutional investor;

(D) A nonaffiliated federal covered investment adviser with investments under management in excess of One Hundred Million Dollars ($100,000,000.00) acting for the account of others pursuant to discretionary authority in a signed record;

(E) A bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(F) A bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:

(i) The broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(ii) Within forty-five (45) days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five (75) days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the person that the administrator has denied the application for registration or has stayed the pendency of the application for good cause;

(G) Not more than three (3) customers in this state during the previous twelve (12) months, in addition to those customers specified in subparagraphs (A) through (F) and under subparagraph (H), if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and

(H) Any other person exempted by rule adopted or order issued under this chapter;

(2) A person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.

(c) **Limits on employment or association.** It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

(d) **Foreign transactions.** A rule adopted or order issued under this chapter may permit:

(1) A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) An individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(B) An individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) An agent who represents a broker-dealer that is exempt under this subsection (d) to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in paragraph (1).

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-401 provided that either a registration or exemption was required of any person to offer or sell any security in the State of Mississippi. Present similar provisions are found in §§ 75-71-401 through 75-71-405.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Exemption of individual who represents certain broker-dealers registered or exempt from registration under this section from requirement of registering as agent, see § 75-71-402.

Succession to current registration by filing as successor an application for registration pursuant to this section, see § 75-71-407.

Federal Aspects — Securities Exchange Act of 1934, 15 USCS § 78a et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 75-71-301.
7. Under former § 75-71-401.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 75-71-301.

Where a company was registered as a broker-dealer with the Securities Division of the Secretary of State's Office, it was subject to service of process and personal jurisdiction under the statute. Allyn v. Wortman, 725 So. 2d 94 (Miss. 1998).

7. Under former § 75-71-401.

Claim to recover money invested in defendant corporation, alleging violation of the blue sky laws where defendant stock was not registered, was denied because plaintiffs were determined to be insiders and incorporators and pre-organization stock subscribers who were not protected by the state's blue sky laws. Russell v. Southern Nat'l Foods, Inc., 754 So. 2d 1246 (Miss. 2000).

ATTORNEY GENERAL OPINIONS

The Mississippi Affordable College Savings Program is exempt from registration under the Mississippi Securities Act and, to that extent, complies with the Mississippi Securities Law. Bennett, July 10, 2002, A.G. Op. #02-0344.

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 55 through 59, 74 et seq., 232.

Law Reviews. Vaaler, Financing a small business in Mississippi: a practitioner's guide to federal and state securities exemptions. Part I, 63 Miss. L. J. 129 (Fall 1993); Part II, 63 Miss. L. J. 267 (Winter, 1993).

Practice References. A.A. Sommer, Jr., Federal Securities Act of 1933 (Matthew Bender).

A.A. Sommer, Jr., Federal Securities Exchange Act of 1934 (Matthew Bender).

A.A. Sommer, Jr., Securities Law Techniques (Matthew Bender).

Sowards and Hirsch, Blue Sky Regulation (Matthew Bender).

§ 75-71-402. Agent registration requirement and exemptions.

(a) **Registration requirement.** It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b).

(b) **Exemptions from registration.** The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 USC Section 78(h)(2));

(2) An individual who represents a broker-dealer that is exempt under Section 75-71-401(b) or 75-71-401(d);

(3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by Section 75-71-202, other than Section 75-71-202(11) and (14);

(5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 USC Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) An individual who represents a broker-dealer registered in this state under Section 75-71-401(a) or exempt from registration under Section 75-71-401(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of One Hundred Million Dollars ($100,000,000.00) acting for the account of others pursuant to discretionary authority in a signed record;

(7) An individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(9) Any other individual exempted by rule adopted or order issued under this chapter.

(c) **Registration effective only while employed or associated.** The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this state.

(d) **Limit on employment or association.** It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) **Limit on affiliations.** An individual may not act as an agent for more than one (1) broker-dealer or one (1) issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this chapter.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — The reference to "15 USC Section 78(h)(2)" in subsection (b)(1) should probably be to "15 USC Section 78o(h)(2)." The section above is set out as added by Section 1 of Chapter 528, Laws of 2009.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Federal Aspects — Securities Act of 1933, 15 USCS § 77a et seq.

Securities Exchange Act of 1934, 15 USCS § 78a et seq.

JUDICIAL DECISIONS

I. Under Current Law.
1.-5. [Reserved for future use.]
II. Under Former Law.
6. Under former § 75-71-31.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 75-71-31.

Although dealer, who was actively involved in consummating a challenged securities transactions, incurred no § 75-71-25 liability since he personally made no misrepresentation of material fact to buyer, such buyer, in a suit for rescission of sale of securities, could recover the full purchase price of the securities from the dealer, with interest from the date of payment under § 75-17-1, but attorney fees were not recoverable. Johnson v. Yerger, 612 F.2d 953 (5th Cir. 1980).

In an action for securities fraud, the trial court properly found a registered security agent to be guilty of fraud where the evidence showed, inter alia, that he had failed to tell plaintiffs that the investment involved a high degree of risk, that he had promised a guaranteed return of eight percent per annum, and that he had claimed the investment could be cashed in at any time with a small discount; nor did the statute of limitations begin to run at the time they received the prospectus, so as to bar the suit, where the evidence established that the security agent knew or should have known that even if plaintiffs undertook to peruse the prospectus, they would not be able to comprehend its contents due to a lack of education; the trial court properly found that plaintiffs were not entitled to relief against the corporate general partner and the individual general partners where they did not participate in the sale of the security to plaintiffs or induce them to make the purchase; the action would be remanded to the trial court for a determination of reasonable attorneys' fees, as authorized by statute. Seaboard Planning Corp. v. Powell, 364 So. 2d 1091 (Miss. 1978).

The sale of a negotiable promissory note by one who had not first obtained a certificate of exemption from the Secretary of State did not violate the blue sky laws. State v. Russell, 358 So. 2d 409 (Miss. 1978).

A corporation which issued its shares was a "seller" within the meaning of Code 1972, § 75-71-31, and was properly held liable since the sale of stock was without a certificate of authority. First Mobile Home Corp. v. Little, 298 So. 2d 676 (Miss. 1974).

§ 75-71-403. Investment adviser registration requirement and exemptions.

(a) **Registration requirement.** It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b) **Exemptions from registration.** The following persons are exempt from the registration requirement of subsection (a):

(1) A person without a place of business in this state that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(B) Institutional investors;

(C) Bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) Any other client exempted by rule adopted or order issued under this chapter;

(2) A person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under paragraph (1); or

(3) Any other person exempted by rule adopted or order issued under this chapter.

(c) **Limits on employment or association.** It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) **Investment adviser representative registration required.** It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under Section 75-71-404(a) or is exempt from registration under Section 75-71-404(b).

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-403 pertained to registration by coordination. Present similar provisions are found in § 75-71-303.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 55 through 59.

§ 75-71-404. Investment adviser representative registration requirement and exemptions.

(a) **Registration requirement.** It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b).

(b) **Exemptions from registration.** The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who is employed by or associated with an investment adviser that is exempt from registration under Section 75-71-403(b) or a federal covered investment adviser that is excluded from the notice filing requirements of Section 75-71-405; and

(2) Any other individual exempted by rule adopted or order issued under this chapter.

(c) **Registration effective only while employed or associated.** The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under Section 75-71-405.

(d) **Limit on affiliations.** An individual may transact business as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser unless a rule adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser.

(e) **Limits on employment or association.** It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) **Referral fees.** An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under Section 75-71-405, or a broker-dealer registered under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under Section 75-71-405, or a broker-dealer registered under this chapter with which the individual is employed or associated as an investment adviser representative.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 55 through 59.

§ 75-71-405. Federal covered investment adviser notice filing requirement.

(a) **Notice filing requirement.** Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) **Notice filing requirement not required.** The following federal covered investment advisers are not required to comply with subsection (c):

(1) A federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;

(B) Institutional investors;

(C) Bona fide preexisting clients whose principal places of residence are not in this state; or

(D) Other clients specified by rule adopted or order issued under this chapter;

(2) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under paragraph (1); and

(3) Any other person excluded by rule adopted or order issued under this chapter.

(c) **Notice filing procedure.** A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with Section 75-71-611, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this chapter and pay the fees specified in Section 75-71-410.

(d) **Effectiveness of filing.** The notice under subsection (c) becomes effective upon its filing.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference at the end of subsection (c) by substituting "Section 75-71-410" for "Section 75-71-410(e)" The Joint Committee ratified the correction at its August 5, 2016, meeting.

Editor's Note — A former § 75-71-405 pertained to registration by qualification. Present similar provisions are found in § 75-71-304.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Federal Aspects — Investment Advisers Act of 1940, 15 USCS § 80b-1 et seq.

§ 75-71-406. Registration by broker-dealer, agent, investment adviser, and investment adviser representative.

(a) **Application for initial registration.** A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with Section 75-71-611, and paying the fee specified in Section 75-71-410 and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain:

(1) The information or record required for the filing of a uniform application; and

(2) Upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

(b) **Amendment.** If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) **Effectiveness of registration.** If an order is not in effect and a proceeding is not pending under Section 75-71-412, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

(d) **Registration renewal.** A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under Section 75-71-412, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this chapter, by paying the fee specified in Section 75-71-410, and by paying costs charged by the designee of the administrator for processing the filings.

(e) **Additional conditions or waivers.** A rule adopted or order issued under this chapter may impose such other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Federal Aspects — National Securities Markets Improvement Act of 1996, 15 USCS § 77b et seq.

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 55 through 59.

§ 75-71-407. Succession and change in registration of broker-dealer or investment adviser.

(a) **Succession.** A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to Section 75-71-401 or 75-71-403 or a notice pursuant to Section 75-71-405 for the unexpired portion of the current registration or notice filing.

(b) **Organizational change.** A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five (45) days after filing its amendment to effect succession.

(c) **Name change.** A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) **Change of control.** A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this chapter.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-407 pertained to persons entitled to file registration statements. Present similar provisions are found in § 75-71-305.

Laws of 2009, ch. 528, §n 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-408. Termination of employment or association of agent and investment adviser representative and transfer of employment or association.

(a) **Notice of termination.** If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) **Transfer of employment or association.** If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter; or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter; or a federal covered investment adviser that has filed a notice under Section 75-71-405 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under Section 75-71-405; then upon the filing by or on behalf of the registrant, within thirty (30) days after the termination, of an application for registration that complies with the requirement of Section 75-71-406(a) and payment of the filing fee required under Section 75-71-410, the registration of the agent or investment adviser representative is:

(1) Immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve (12) months; or

(2) Temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve (12) months.

(c) **Withdrawal of temporary registration.** The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in Section 75-71-412 and the administrator does so within thirty (30) days after the filing of the application. If the administrator does not withdraw the temporary registration within the thirty-day period, registration becomes automatically effective on the thirty-first day after filing.

(d) **Power to prevent registration.** The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.

(e) **Termination of registration or application for registration.** If the administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-409. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative.

Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty (60) days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this chapter. The administrator may institute a revocation or suspension proceeding under Section 75-71-412 within one (1) year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-409 pertained to filing fees. Present similar provisions are found in § 75-71-310.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-410. Fees.

(a) **Fee established by administrator.** The administrator shall establish fees by rule pursuant to the Mississippi Administrative Procedures Law for:

(1) An initial filing of an application as a broker-dealer and renewal of an application by a broker-dealer for registration;

(2) An application for registration as an agent and renewal of registration as an agent;

(3) An application for registration as an investment adviser and renewal of registration as an investment adviser.

(4) An application for registration as an investment adviser representative, a renewal of registration as an investment adviser representative, and a change of registration as an investment adviser representative; and

(5) An initial fee and annual notice fee for a federal covered investment adviser required to file a notice under Section 75-71-405.

(b) **Payment.** A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Mississippi Administrative Procedures Law, see § 25-43-1.101 et seq.

§ 75-71-411. Postregistration requirements.

(a) **Financial requirements.** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 USC Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 USC Section 80b-22), a rule adopted or order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

(b) **Financial reports.** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 USC Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 USC Section 80b-22), a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) **Recordkeeping.** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 USC Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 USC Section 80b-22):

(1) A broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this chapter;

(2) Broker-dealer records required to be maintained under paragraph (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 USC Section 78q(a)) if they are readily accessible to the administrator; and

(3) Investment adviser records required to be maintained under paragraph (1) may be maintained in any form of data storage required by rule adopted or order issued under this chapter.

(d) **Audits or inspections.** The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) **Custody and discretionary authority bond or insurance.** Subject to the limitations of Section 15(h) of the Securities Exchange Act of 1934

(15 USC Section 78o(h)) and Section 222 of the Investment Advisers Act of 1940 (15 USC Section 80b-22), the administrator may by rule require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount as prescribed by rule. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in Section 75-71-509(j)(2).

(f) **Requirements for custody.** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 USC Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 USC Section 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) **Investment adviser brochure rule.** With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or order issued under this chapter may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) **Continuing education.** A rule adopted or order issued under this chapter may require an individual registered under Section 75-71-402 or Section 75-71-404 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under Section 75-71-404.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-411 pertained to information required in all registration statements. Present similar provisions are found in § 75-71-305.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Federal Aspects — Securities Exchange Act of 1934, 15 USCS § 78a et seq.

Investment Advisers Act of 1940, 15 USCS § 80b-1 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 75-71-13.
7. Under former § 75-71-29.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 75-71-13.

Surety failing to disclose in action filed against it, that appeals from dismissal of actions previously brought are pending, was estopped, as against plaintiffs in such previous actions, to assert that judgment in the subsequent action has exhausted its liability. United States Fid. & Guar. Co. v. Rice, 241 Miss. 307, 130 So. 2d 924 (1961).

Purpose of bond under former Code 1942, § 5367 was to protect purchasers of stock against loss on account of misrepresentation of any material fact. Hederi v. United States Fid. & Guar. Co., 237 Miss. 251, 114 So. 2d 615 (1959).

Under former Code 1942, § 5368, chancery court had jurisdiction over bill of complaint against surety on bond of bankrupt corporation for damages sustained by plaintiffs as result of purchase of worthless stock in bankrupt corporation through fraudulent representation of bankrupt corporation's stock salesman, notwithstanding corporation was in bankruptcy and the bankrupt had not been discharged. United States Fid. & Guar. Co. v. Rice, 241 Miss. 307, 130 So. 2d 924 (1961).

In an action under the Blue Sky Law to enforce bonds issued by the surety, the recitals of the bond are to be construed most strongly against the surety. New Amsterdam Cas. Co. v. Wood, 213 Miss. 499, 57 So. 2d 141 (1952).

Where application and permit which was issued pursuant to the issue of a bond by surety under the Blue Sky Law provided that this covered the sale of preferred stock "and none other" and the bond issued provided that it covered the sale by corporation of "its stock," and the sales of the common stock were induced by showing the bond to respective buyers, this bond covered the sale of any stock of the corporation. New Amsterdam Cas. Co. v. Wood, 213 Miss. 499, 57 So. 2d 141 (1952).

7. Under former § 75-71-29.

Where the surety under the bond filed pursuant to Code 1972, § 75-71-29 had an opportunity to defend the action against its principal, and the evidence presented was sufficient to bind the principal under the Mississippi Securities Law, the surety was bound by the pro confesso judgment entered against the principal. First Mobile Home Corp. v. Little, 298 So. 2d 676 (Miss. 1974).

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State § 59 et seq.

§ 75-71-412. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.

(a) **Disciplinary conditions-applicants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) **Disciplinary conditions-registrants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the administrator may not:

(1) Institute a revocation or suspension proceeding under this subsection (b) based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one (1) year after the date of the order on which it is based; or

(2) Under subsection (d)(5)(A) or (B), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) **Disciplinary penalties-registrants.** If the administrator finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), (12) or (13) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of the amount specified in Section 75-71-613 for each violation on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(d) **Grounds for discipline.** A person may be disciplined under subsections (a) through (c) if the person:

(1) Has filed an application for registration in this state under this chapter or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten (10) years;

(3) Has been convicted of a felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business

involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) Is the subject of an order, issued after notice and opportunity for hearing by:

(A) The securities or other financial services regulator of a state or the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) The securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) The Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) A court adjudicating a United States Postal Service fraud order;

(E) The insurance regulator of a state denying, suspending, or revoking registration as an insurance agent; or

(F) A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business;

(6) Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission; the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this subsection (d) without a finding of insolvency as to the applicant or registrant;

(8) Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under Section 75-71-411(d) or refuses access to a registrant's office to conduct an audit or inspection under Section 75-71-411(d);

(9) Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten (10) years;

(10) Has not paid the proper filing fee within thirty (30) days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this subsection (d) when the deficiency is corrected;

(11) After notice and opportunity for a hearing, has been found within the previous ten (10) years:

(A) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten (10) years; or

(14) Is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this subsection if the individual has successfully completed all examinations required by subsection (e). The administrator may require an applicant for registration under Section 75-71-402 or 75-71-404 who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination.

(e) **Examinations.** A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) **Summary process.** The administrator may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) **Procedural requirements.** An order issued may not be issued under this section, except under subsection (f), without:

(1) Appropriate notice to the applicant or registrant;

(2) Opportunity for hearing; and

(3) Findings of fact and conclusions of law in a record in accordance with the administrative hearing procedures set forth in the rules.

(h) **Control person liability.** A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) **Limit on investigation or proceeding.** The administrator may not institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one (1) year after the administrator actually acquires knowledge of the material facts.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Definition of predecessor act, see § 75-71-102(22).

Automatic renewal of registration unless order is in effect under this section, see § 75-71-406.

Amount of civil penalties or fines described in this section, see § 75-71-613.

Federal Aspects — Commodity Exchange Act, 7 USCS § 1 et seq.

Securities Act of 1933, 15 USCS § 77a et seq.

Securities Exchange Act of 1934, 15 USCS § 78a et seq.

Investment Advisers Act of 1940, 15 USCS § 80b-1 et seq.

Investment Company Act of 1940, 15 USCS § 80a-1 et seq.

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 60 through 66.

§§ 75-71-413 through 75-71-431. Repealed.

Repealed by Laws, 2009, ch. 582, § 2, effective from and after January 1, 2010.

§ 75-71-413 [Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.]

§ 75-71-415 [Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.]

§ 75-71-417 [Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.]

§ 75-71-419 [Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.]

§ 75-71-421 [Laws, 1981, ch. 521, § 304; Laws, 1990, ch. 352, § 15; Laws, 1997, ch. 480, § 15, eff from and after passage (approved March 27, 1997).]

§ 75-71-423 [Laws, 1981, ch. 521, § 304, eff from and after July 1, 1981.]

§ 75-71-425 [Laws, 1981, ch. 521, § 305, eff from and after July 1, 1981.]

§ 75-71-427 [Laws, 1981, ch. 521, § 305, eff from and after July 1, 1981.]

§ 75-71-429 [Laws, 1981, ch. 521, § 305, eff from and after July 1, 1981.]

§ 75-71-431 [Laws, 1981, ch. 521, § 305, eff from and after July 1, 1981.]

Editor's Note — Former § 75-71-413 pertained to permitting the omission of information or document from the registration statement.

Former § 75-71-415 provided certain information was not to be required in nonissuer distributions. Present similar provisions are found in § 75-71-305.

Former § 75-71-417 pertained to conditions imposable on registrations by qualification or coordination. Present similar provisions are found in § 75-71-305.

Former § 75-71-419 pertained to the duration of registration statements. Present similar provisions are found in § 75-71-305.

Former § 75-71-421 pertained to reports that may be required while registration statement is effective. Present similar provisions are found in § 75-71-305.

Former § 75-71-423 pertained to amendments to registration statements to increase the amount of the offering of certain securities. Present similar provisions are found in § 75-71-305.

Former § 75-71-425 pertained to the denial, suspension or revocation of the effectiveness of a registration statement and stop orders. Present similar provisions are found in § 75-71-306.

Former § 75-71-427 pertained to summary temporary postponement or suspension of the effectiveness of registration statements. Present similar provisions are found in § 75-71-306.

Former § 75-71-429 pertained to notice, hearing and written findings and conclusions for stop order. Present similar provisions are found in § 75-71-306.

Former § 75-71-431 pertained to vacation or modification of stop orders. Present similar provisions are found in § 75-71-306.

ARTICLE 5.

FRAUD AND LIABILITIES.

SEC.	
75-71-501.	General fraud.
75-71-502.	Prohibited conduct in providing investment advice.
75-71-503.	Evidentiary burden.
75-71-504.	Filing of sales and advertising literature.
75-71-505.	Misleading filings.
75-71-506.	Misrepresentations concerning registration or exemption.
75-71-507.	Qualified immunity.
75-71-508.	Criminal penalties.

75-71-509. Civil liability.
75-71-510. Rescission offers.

§ 75-71-501. General fraud.

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(1) To employ a device, scheme, or artifice to defraud;

(2) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-501 [Laws, 1981, ch. 521, § 101; Laws, 1987, ch. 477, § 13, eff from and after July 1, 1987; Repealed by Laws, 2009, ch. 582, § 2, effective from and after January 1, 2010] pertained to fraud or deceit in connection with offers, sales or purchases. Nearly identical provisions are found in the section above.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 75-71-43.
7. Under former § 75-71-501.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 75-71-43.

By affirmatively misrepresenting the prior ownership of corporate stock being offered for sale, second corporate officer engaged in an act that operated as a fraud and deceit upon the purchaser of the securities in violation of § 75-71-43(b)(2); furthermore, by utilizing broker's services to conceal his position, first corporate officer took affirmative action to perpetuate second corporate officer's misrepresentation, and by so doing, first corporate officer employed a device, scheme or artifice to defraud in violation of § 75-71-43(b)(1) and engaged in an act that operated as a fraud and deceit upon the purchaser of the securities in violation of § 75-71-43(b)(2). Accordingly, purchaser of the securities, whose sale was made in violation of the antifraud provisions of the Mississippi Securities Act, statutorily was entitled to rescind the transaction under Code 1972, § 75-71-31(2). Johnson v. Yerger, 612 F.2d 953 (5th Cir. 1980).

Defendant, who had issued, offered, sold and delivered certain unregistered securities in interstate commerce, had engaged in acts, practices and a course of business that operated as a fraud and a deceit and had employed deceptive devices, artifices and schemes to defraud plaintiff buyers in violation of this section where, inter alia, defendant promoted or engaged a district attorney as its so-called president to imply that all investments were safe and that the offering was legal, represented that secretary of state had approved the securities, and failed to register the issue with the Securities & Exchange Commission. Felts v. National Account Sys. Ass'n, 469 F. Supp. 54 (N.D. Miss. 1978).

7. Under former § 75-71-501.

Chancellor properly affirmed a final order finding that a corporation's officers violated the provisions of the former Mississippi Securities Act (repealed effective January 1, 2010; similar provisions may be found in the Mississippi Securities Act of 2009, effective January 1, 2010) because they did not comply with the terms of the private placement memorandum by placing investment funds in an escrow account and by maintaining adequate records of the corporation's financial operating activities; however, there was no basis in the law for the method of calculating the penalties by multiplying the number of violations by the number of investors. Harrington v. Office of the Miss. Secy. of State, 129 So. 3d 153 (Miss. 2013).

The statute is virtually identical to § 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q, and, therefore, there is no private right of action under the statute. Felts v. National Account Sys. Ass'n, 469 F. Supp. 54 (N.D. Miss. 1978).

Section 75-71-501 creates cause of action for fraud or deceit in connection with securities transactions. Geisenberger v. John Hancock Distribs., Inc. 774 F. Supp. 1045 (S.D. Miss. 1991). Rather than borrowing from cases involving federal Rule 10b-5 to create limitations period for § 75-71-501, more appropriate limitations period is that set forth in § 75-71-725; similarity between § 75-71-501 and Rule 10b-5 of Securities Act of 1934 does not mean that court can apply federal judicially-created statute of limitations to state statute. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

Having determined that § 75-71-725 is most applicable limitations period, court found on basis of particular facts that genuine issue of material fact remained concerning whether exercise of reasonable diligence on part of plaintiff would have discovered violation, for purposes of determining beginning of running of limitations period. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

Both § 75-71-717(a)(2) and § 75-71-501 contain implicit requirement of reasonable reliance, consistent with federal Rule 10b-5 of Securities Act of 1934. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

In deciding whether investor reasonably relied on misrepresentations made by insurance carrier and its subsidiary in connection with sale of security, court should consider sophistication and expertise of investor in financial and securities matters, existence of long-standing business or personal relationships between parties, access of investor to relevant information, existence of fiduciary relationship, defendant's concealment of fraud, investor's opportunity to detect any fraud, whether investor initiated stock transaction or sought to expedite same, and general or specific nature of misrepresentations. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

Section 75-71-717(a)(2) creates independent cause of action and need not be construed in conjunction with § 75-71-501. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

Securities laws are not designed to be insurance plan for cost of securities purchased in reliance upon material misstatements of fact or omissions to state material facts. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

RESEARCH REFERENCES

ALR. Commodities broker's state-law duties to customers. 55 A.L.R.4th 394.

Who is "forced seller" for purposes of maintenance of civil action under § 10(b) of Securities Exchange Act of 1934 (15 USCS § 78j(b)) and SEC Rule 10b-5. 59 A.L.R. Fed. 10.

"Purchase or sale" requirement as to defendant or victim in criminal prosecutions for violation of § 10(b) of Securities

Exchange Act (15 USCS § 78j(b)) and SEC Rule 10b-5. 66 A.L.R. Fed. 848.

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 158 through 164, 196.

28 Am. Jur. Proof of Facts 3d 87, Proof of Unsuitable and Unauthorized Trading by Securities Brokers.

28 Am. Jur. Proof of Facts 3d 185, Proof of Violation of Privacy Rights in Employment Drug Testing.

36 Am. Jur. Trials 1, Broker-Dealer Fraud: Churning.

CJS. 79A C.J.S., Securities Regulation § 378.

Law Reviews. Vaaler, Financing a small business in Mississippi: a practitioner's guide to federal and state securities exemptions. Part I, 63 Miss. L. J. 129 (Fall 1993); Part II, 63 Miss. L. J. 267 (Winter, 1993).

1981 Mississippi Supreme Court Review: Contract, Corporate, and Commercial Law. 52 Miss. L. J. 411, June 1982.

Practice References. A.A. Sommer, Jr., Federal Securities Act of 1933 (Matthew Bender).

A.A. Sommer, Jr., Federal Securities Exchange Act of 1934 (Matthew Bender).

A.A. Sommer, Jr., Securities Law Techniques (Matthew Bender).

Sowards and Hirsch, Blue Sky Regulation (Matthew Bender).

§ 75-71-502. Prohibited conduct in providing investment advice.

(a) **Fraud in providing investment advice.** It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

(1) To employ a device, scheme, or artifice to defraud another person; or

(2) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) **Rules specifying contents of advisory contract.** A rule adopted under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State § 198.

§ 75-71-503. Evidentiary burden.

(a) **Civil.** In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(b) **Criminal.** In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-503 [Laws, 1981, ch. 521, § 414, eff from and after July 1, 1981] pertained to prohibited practices concerning fraud, deceit and lack of disclosure, requirements as to investment advisory contracts, and custody of securities or funds by investment advisers. Present similar provisions are found in § 75-71-502.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-504. Filing of sales and advertising literature.

(a) **Filing requirement.** Except as otherwise provided in subsection (b), a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(b) **Excluded communications.** This section does not apply to sales and advertising literature specified in subsection (a) which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by Section 75-71-201, Section 75-71-202, or Section 75-71-203 except as required pursuant to Section 75-71-201(7).

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Exemption of certain securities from the requirements of this section, see § 75-71-201.

Exemption of certain transactions from the requirements of this section, see § 75-71-202.

ATTORNEY GENERAL OPINIONS

The Mississippi Affordable College Savings Program is exempt from registration under the Mississippi Securities Act and, to that extent, complies with the Mississippi Securities Law. Bennett, July 10, 2002, A.G. Op. #02-0344.

RESEARCH REFERENCES

ALR. Commodities broker's state-law duties to customers. 55 A.L.R.4th 394.

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 81, 204.

§ 75-71-505. Misleading filings.

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State § 199.

§ 75-71-506. Misrepresentations concerning registration or exemption.

The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

RESEARCH REFERENCES

ALR. Commodities broker's state-law duties to customers. 55 A.L.R.4th 394.

§ 75-71-507. Qualified immunity.

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-508. Criminal penalties.

(a) **Criminal penalties.** A person that willfully violates this chapter except Section 75-71-504 or the notice filing requirements of Section 75-71-302 or Section 75-71-405, or that willfully violates Section 75-71-505 knowing the statement made to be false or misleading in a material respect, upon conviction, shall be fined not more than the amount set forth in Section 75-71-613 or imprisoned not more than five (5) years, or both. An individual convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order. Each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings.

(b) **Criminal referral not required.** The Attorney General with or without a referral from the administrator, may institute criminal proceedings under this chapter. The attorneys duly employed by the administrator may be appointed by the Attorney General or the proper prosecuting attorney or local district attorney to act as special prosecutors in criminal proceedings.

(c) **No limitation on other criminal enforcement.** This chapter does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Amount of criminal penalties or fines described in this section, see § 75-71-613.

§ 75-71-509. Civil liability.

(a) **Securities Litigation Uniform Standards Act.** Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

(b) **Liability of seller to purchaser.** A person is liable to the purchaser if the person sells a security in violation of Section 75-71-301 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorney's fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph (3).

(2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph (3).

(3) Actual damages in an action arising under this subsection (b) are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest from the date of the purchase, costs, and reasonable attorney's fees determined by the court.

(c) **Liability of purchaser to seller.** A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorney's fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (3).

(2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph (3).

(3) Actual damages in an action arising under this subsection (c) are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate of interest from the date of the sale of the security, costs and reasonable attorney's fees determined by the court.

(d) **Liability of unregistered broker-dealer and agent.** A person acting as a broker-dealer or agent that sells or buys a security in violation of Section 75-71-401(a), 75-71-402(a), or Section 75-71-506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsection (b)(1) through (3), or, if a seller, for a remedy as specified in subsection (c)(1) through (3).

(e) **Liability of unregistered investment adviser and investment adviser representative.** A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of Section 75-71-403(a), Section 75-71-404(a), or Section 75-71-506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest from the date of payment, costs, and reasonable attorney's fees determined by the court.

(f) **Liability for investment advice.** A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following:

(1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest from the date of the fraudulent conduct, costs, and reasonable attorney's fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

(2) This subsection (f) does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(g) **Joint and several liability.** The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f):

(1) A person that directly or indirectly controls a person liable under subsections (b) through (f), unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(2) An individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) An individual who is an employee of or associated with a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof

that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(h) **Right of contribution.** A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(i) **Survival of cause of action.** A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(j) **Statute of limitations.** A person may not obtain relief:

(1) Under subsection (b) for violation of Section 75-71-301, or under subsection (d) or (e), unless the action is instituted within one (1) year after the violation occurred; or

(2) Under subsection (b), other than for violation of Section 75-71-301, or under subsection (c) or (f), unless the action is instituted within the earlier of two (2) years after discovery of the facts constituting the violation or five (5) years after the violation.

(k) **No enforcement of violative contract.** A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

(*l*) **No contractual waiver.** A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

(m) **Survival of other rights or remedies.** The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or Section 75-71-411(e).

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Federal Aspects — Securities Litigation Uniform Standards Act of 1998, 15 USCS 77p et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

A. Under former § 75-71-717.

6. In general.
7. Damages.

B. Under former § 75-71-725.

8. In general.

C. Under former § 75-71-25.

9. In general.
10. Evidence.
11. Amount of recovery.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

A. Under former § 75-71-717.

6. In general.

In a suit filed by members of a limited liability company against current and former officers and directors of a corporation or its successors in interest alleging federal and state securities law violations and fraud relating to a registration statement, the circuit court did not err in denying the directors' and officers' motion to dismiss as the members' complaint adequately pleaded a cause of action under both Miss. Code Ann. § 75-71-717 and fraud by alleging in their complaint that the corporation made multiple written and oral communications which contained material misstatements and omissions of material facts regarding the corporation's business operations, including but not limited to the financial implications of a purchase price adjustment dispute, and that they relied on these communications in deciding to purchase the corporation's stock. The issue of causation and whether the disclosures were sufficient were questions of fact for the jury, and the members adequately pleaded that the officers and directors acted with the intent required to support a cause of action for fraud. Qualcomm Inc. v. Am. Wireless License Group, LLC, 980 So. 2d 261 (Miss. 2007), writ of certiorari denied by 552 U.S. 1312, 128 S. Ct. 1890, 170 L. Ed. 2d 748, 2008 U.S. LEXIS 3127, 76 U.S.L.W. 3554 (2008).

Even if an investment decision is induced by fraud which is relied upon by a plaintiff, recovery is not permitted if the proximate cause of the monetary loss is other than the fraud alleged. Russell v. Southern Nat'l Foods, Inc., 754 So. 2d 1246 (Miss. 2000).

An affirmative intent to deceive must be shown or, at the very least, intentional or deceptive conduct must be shown. Russell v. Southern Nat'l Foods, Inc., 754 So. 2d 1246 (Miss. 2000).

In deciding whether investor reasonably relied on misrepresentations made by insurance carrier and its subsidiary in connection with sale of security, court should consider sophistication and expertise of investor in financial and securities matters, existence of long-standing business or personal relationships between parties, access of investor to relevant information, existence of fiduciary relationship, defendant's concealment of fraud, investor's opportunity to detect any fraud, whether investor initiated stock transaction or sought to expedite same, and general or specific nature of misrepresentations. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

Securities laws are not designed to be insurance plan for cost of securities purchased in reliance upon material misstatements of fact or omissions to state material facts. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

Section 75-71-717(a)(2) creates independent cause of action and need not be construed in conjunction with § 75-71-501. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

Section 75-71-725 provides statute of limitations for liability created under § 75-71-717(2). Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

Language of §§ 75-71-725 and 75-71-717 clearly demonstrates that claim may be brought solely pursuant to § 75-71-717. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

Both § 75-71-717(a)(2) and § 75-71-501 contain implicit requirement of reasonable reliance, consistent with federal Rule 10b-5 of Securities Act of 1934. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

7. Damages.

Provided there is privity, rescission damages are allowed in a securities fraud case. Allyn v. Wortman, 725 So. 2d 94 (Miss. 1998).

B. Under former § 75-71-725.

8. In general.

Rather than borrowing from cases involving federal Rule 10b-5 to create limitations period for § 75-71-501, more appropriate limitations period is that set forth in § 75-71-725; similarity between § 75-71-501 and Rule 10b-5 of Securities Act of 1934 does not mean that court can apply federal judicially-created statute of limitations to state statute. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

Having determined that § 75-71-725 is most applicable limitations period, court found on basis of particular facts that genuine issue of material fact remained concerning whether exercise of reasonable diligence on part of plaintiff would have discovered violation, for purposes of determining beginning of running of limitations period. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

Section 75-71-725 provides statute of limitations for liability created under § 75-71-717. Geisenberger v. John Hancock Distribs., Inc., 774 F. Supp. 1045 (S.D. Miss. 1991).

C. Under former § 75-71-25.

9. In general.

An officer of a corporation was properly held liable under this section [Code 1972, § 75-71-25] where he participated in the sale of an unauthorized stock by making false and fraudulent misrepresentations to induce others to purchase the stock. First Mobile Home Corp. v. Little, 298 So. 2d 676 (Miss. 1974).

Under the Blue Sky Law the principal is liable if the surety is liable. New Amsterdam Cas. Co. v. Wood, 213 Miss. 499, 57 So. 2d 141 (1952).

Where application and permit which was issued pursuant to the issue of a bond by surety under the Blue Sky Law provided that this covered the sale of preferred stock "and none other" and the bond issued provided that it covered the sale by corporation of "its stock," and the sales of the common stock were induced by showing the bond to respective buyers, this bond covered the sale of any stock of the corporation. New Amsterdam Cas. Co. v. Wood, 213 Miss. 499, 57 So. 2d 141 (1952).

Buyer of stock was not entitled to recover against corporation under Blue Sky Law for fraud in sale thereof, where there was no proof that corporation ever qualified under Blue Sky Law. Mississippi Power Co. v. May, 173 Miss. 580, 161 So. 149 (1935), error overruled, 173 Miss. 592, 161 So. 755 (1935).

Purchaser of investment bonds having right of action for misrepresentation by seller under statute could proceed against principal without joining surety. Irving v. Bankers' Mtg. Co., 169 Miss. 890, 151 So. 740 (1934).

Buyer's suit to rescind against brokers under Blue Sky Law must be brought under section relating to "dealers," not under that relating to "investment companies." White v. Stewart, 166 Miss. 694, 145 So. 747 (1933).

Investment companies cannot contract to limit authority of agents in sale of investment securities and thus defeat purpose of statute permitting rescission of contract for misrepresentations. Bankers' Mtg. Co. v. McMullen, 165 Miss. 382, 141 So. 331 (1932); White v. Stewart, 166 Miss. 694, 145 So. 747 (1933).

Violation of Blue Sky Law constitutes no defense to negotiable instrument in hands of innocent purchaser for value without notice. Riddle v. Tallahatchie Home Bank, 160 Miss. 141, 133 So. 128 (1930).

10. Evidence.

In an action for securities fraud, the trial court properly found a registered security agent to be guilty of fraud where the evidence showed, inter alia, that he had failed to tell plaintiffs that the investment involved a high degree of risk, that he had promised a guaranteed return of eight percent per annum, and that he had claimed the investment could be cashed in at any time with a small discount; nor did the statute of limitations begin to run at the time they received the prospectus, so as to bar the suit, where the evidence established that the security agent knew or should have known that even if plaintiffs undertook to peruse the prospectus, they would not be able to comprehend its contents due to a lack of education; the trial court properly found that plaintiffs were not entitled to relief against the corporate general partner and the individual general partners where they did not participate in the sale of the security to plaintiffs or induce them to make the purchase; the action would be remanded to the trial court for a determination of reasonable attorneys' fees, as authorized by statute. Seaboard Planning Corp. v. Powell, 364 So. 2d 1091 (Miss. 1978).

Statute respecting misrepresentations in sale of investment securities abrogates parol evidence rule to extent of permitting proof of misrepresentation. Bankers' Mtg. Co. v. McMullen, 165 Miss. 382, 141 So. 331 (1932).

11. Amount of recovery.

Misrepresentation by corporate officers corporate securities offered for sale were owned by an estate, and thus were available for sale due to the fortuity of a death was a misrepresentation of material fact, since there was a substantial likelihood that a reasonable investor would have considered the true ownership important in deciding on his cause of action with respect to the transaction, and thus, these corporate officers were civilly liable to buyer under Code 1972, § 75-71-25, and such buyer was entitled to recover the full purchase price of the securities and reasonable attorney's fees against these defendants whose liability arose under such statute; however, dealer who "fronted" the transaction, although actively involved in consummating the challenged securities transactions, incurred no § 75-71-25 liability since he personally made no misrepresentation of material fact to buyer. Johnson v. Yerger, 612 F.2d 953 (5th Cir. 1980).

The fact that plaintiffs in a securities fraud action did not post a bond did not preclude them from full recovery under this section. Felts v. National Account Sys. Ass'n, 469 F. Supp. 54 (N.D. Miss. 1978).

In an action for securities fraud, the trial court properly found a registered security agent to be guilty of fraud where the evidence showed, inter alia, that he had failed to tell plaintiffs that the investment involved a high degree of risk, that he had promised guaranteed return of eight percent per annum, and that he had claimed the investment could be cashed in at any time with a small discount; nor did the statute of limitations begin to run at the time they received the prospectus, so as to bar the suit, where the evidence established that the security agent knew or should have known that even if plaintiffs undertook to peruse the prospectus, they would not be able to comprehend its contents due to a lack of education; the trial court properly found that plaintiffs were not entitled to relief against the corporate general partner and the individual general partners where they did not participate in the sale of the security to plaintiffs or induce them to make the purchase; the action would be remanded to the trial court for a determination of reasonable attorneys' fees, as authorized by statute. Seaboard Planning Corp. v. Powell, 364 So. 2d 1091 (Miss. 1978).

Recovery for losses to the purchasers of all stocks sold by misrepresentation includes interest and attorneys' fees, but the recoveries against the surety should not exceed the amount of the bonds. New Amsterdam Cas. Co. v. Wood, 213 Miss. 499, 57 So. 2d 141 (1952).

One who before enactment of 1930 Blue Sky Law was induced to exchange investment bond having cash value for defendant's bond by false representation that buyer could obtain cash surrender value of bond exchanged with interest at any time was entitled to recover such cash surrender value with interest and reasonable attorney's fees. Irving v. Bankers' Mtg. Co., 169 Miss. 890, 151 So. 740 (1934).

One induced to purchase investment securities by misrepresentations of material facts may rescind contract and recover amount paid and attorney's fees. Bankers' Mtg. Co. v. McMullen, 165 Miss. 382, 141 So. 331 (1932).

RESEARCH REFERENCES

ALR. Commodities broker's state-law duties to customers. 55 A.L.R.4th 394.

What gives rise to right of rescission under state blue sky laws. 52 A.L.R.5th 491.

Necessity of privity between purchaser and issuer of security in action against issuer under § 12 of the Securities Act of 1933 (15 USCS § 771). 56 A.L.R. Fed. 659.

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State § 166 et seq.

69A Am. Jur. 2d, Securities Regulation—State § 217 et seq.

69A Am. Jur. 2d, Securities Regulation—State §§ 141 through 147.

Law Reviews. 1981 Mississippi Supreme Court Review: Contract, Corporate, and Commercial Law. 52 Miss. L. J. 411, June 1982.

§ 75-71-510. Rescission offers.

A purchaser of a security, seller of a security, or recipient of investment advice may not maintain an action under Section 75-71-509 if:

(1) The purchaser of a security, seller of a security, or recipient of investment advice receives in a record, before the action is instituted:

(A) An offer stating the respect in which liability under Section 75-71-509 may have arisen and fairly advising the purchaser of a security, seller of a security, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase of the security, sale of the security, or receipt of the investment advice;

(B) If the basis for relief under this section may have been a violation of Section 75-71-509(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at six percent (6%) from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at eight percent (8%) interest from the date of the purchase in cash equal to the damages computed in the manner provided in this subparagraph;

(C) If the basis for relief under this section may have been a violation of Section 75-71-509(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate of interest from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest from the date of the sale;

(D) If the basis for relief under this section may have been a violation of Section 75-71-509(d); and if the customer is a purchaser, an offer to pay as specified in subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C);

(E) If the basis for relief under this section may have been a violation of Section 75-71-509(e), an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest from the date of payment; or

(F) If the basis for relief under this section may have been a violation of Section 75-71-509(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate of interest from the date of the violation causing the loss;

(2) The offer under paragraph (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty (30) days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three (3) days, that the administrator, by order, specifies;

(3) The offeror has the present ability to pay the amount offered or to tender the security under paragraph (1);

(4) The offer under paragraph (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(5) The purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (1) in a record within the period specified under paragraph (2) is paid in accordance with the terms of the offer.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Article 6.

Administration and Judicial Review.

Sec.
75-71-601. Administration.
75-71-602. Investigations and subpoenas.
75-71-603. Civil enforcement.
75-71-604. Administrative enforcement.
75-71-605. Rules, forms, orders, interpretative opinions, and hearings.
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75-71-608. Uniformity and cooperation with other agencies.
75-71-609. Judicial review.
75-71-610. Jurisdiction.
75-71-611. Service of process.
75-71-612. Severability clause.
75-71-613. Amounts of civil and criminal penalties.

§ 75-71-601. Administration.

(a) **Administration.** The administrator shall administer this chapter.

(b) **Unlawful use of records or information.** It is unlawful for the administrator or an officer, employee, or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under Section 75-71-607(b). This chapter does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with Section 75-71-602, 75-71-607(c), or 75-71-608.

(c) **No privilege or exemption created or diminished.** This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(d) **Investor education.** The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-601 pertained to petition for judicial review of order, venue and scope of review. Present similar provisions are found in § 75-71-609.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 75-71-3.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under former § 75-71-3.

Preorganization stock subscribers who afterward procured a charter for and organized a corporation and attended stockholders' meetings, have no right of action for the failure of the corporation, or one who induces them to purchase stock, to comply with the Blue Sky Laws of Mississippi. Guynn v. Shulters, 223 Miss. 232, 78 So. 2d 114, 50 A.L.R.2d 1088 (1955), error overruled 223 Miss. 232, 78 So. 2d 793, 50 A.L.R.2d 1088.

Sale by owners of stock in foreign corporation which had never sold nor offered for sale any stock in Mississippi is not prohibited by Blue Sky Law. White v. Stewart, 166 Miss. 694, 145 So. 747 (1933).

Violation of Blue Sky Law constitutes no defense to negotiable instrument in hands of innocent purchaser for value without notice. Riddle v. Tallahatchie Home Bank, 160 Miss. 141, 133 So. 128 (1930).

RESEARCH REFERENCES

Am Jur. 69A Am. Jur. 2d, Securities Regulation—State §§ 130 through 140.

§ 75-71-602. Investigations and subpoenas.

(a) **Authority to investigate.** The administrator may:

(1) Conduct public or private investigations within or outside of this state which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

(2) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or order issued under this chapter if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) **Administrator powers to investigate.** For the purpose of an investigation under this chapter, the administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation.

(c) **Procedure and remedies for noncompliance.** If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the administrator under this chapter, the administrator may apply to the Chancery Court of the First Judicial District of Hinds County, Mississippi, or a court of another state to enforce compliance. The court may:

(1) Hold the person in contempt;

(2) Order the person to appear before the administrator;

(3) Order the person to testify about the matter under investigation or in question;

(4) Order the production of records;

(5) Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice; and

(6) Grant any other necessary or appropriate relief.

(d) **Application for relief.** This section does not preclude a person from applying to the Chancery Court of the First Judicial District of Hinds County, Mississippi, or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) **Use immunity procedure.** An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this chapter or in an action or proceeding instituted by the administrator under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to the Chancery Court of the First Judicial District of Hinds County, Mississippi, to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) **Assistance to securities regulator of another jurisdiction.** At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the administrator to carry out the request for assistance.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-603. Civil enforcement.

(a) **Civil action instituted by administrator.** If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may maintain an action in chancery court to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

(b) **Relief available.** In an action under this section and on a proper showing, the court may:

(1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) Order other appropriate or ancillary relief, which may include:

(A) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets;

(B) Ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) Imposing a civil penalty of the amount set forth in Section 75-71-613 for each violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act; and

(D) Ordering the payment of prejudgment and postjudgment interest; or

(3) Order such other relief as the court considers appropriate.

(c) **No bond required.** The administrator may not be required to post a bond in an action or proceeding under this chapter.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-603 pertained to adduction of additional evidence and modification of original findings. Present similar provisions are found in § 75-71-609.
Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Definition of predecessor act, see § 75-71-102(22).
Amount of civil penalty described in this section, see § 75-71-613.

§ 75-71-604. Administrative enforcement.

(a) **Issuance of an order or notice.** If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

(2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under Section 75-71-401(b)(1)(D) or (F) or an investment adviser under Section 75-71-403(b)(1)(C); or

(3) Issue an order:

(A) Under Section 75-71-204;

(B) Imposing a civil penalty in the case of an issuer of registered securities, broker-dealer, investment advisor, agent, investment adviser representative, or other person who violated this chapter;

(C) Barring or suspending the person from association with a broker-dealer or investment advisor registered in this state; or

(D) Requiring the person to pay restitution for any loss or disgorge any profits arising from the violation, including interest.

(b) **Summary process.** An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered, in accordance with Section 75-71-611. The order must include a statement of any civil penalty or other administrative remedy to be imposed under subsection (a) or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within thirty (30) days after the date of service of the order, the order, including the imposition of a civil penalty or other administrative remedy to be imposed under subsection (a) or requirement for payment of the costs of investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) **Procedure for final order.** If a hearing is requested or ordered pursuant to subsection (b), a hearing must be held pursuant to the administrative hearing procedures set forth in the rules. A final order may not be issued unless the administrator makes findings of fact and conclusions of law in a record in accordance with the administrative hearing procedures set forth in the rules. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) **Civil penalty.** In a final order under subsection (c), the administrator may impose a civil penalty in an amount set forth in Section 75-71-613 for each violation and each violation shall be considered a separate offense in a single proceeding or a series of related proceedings.

(e) **Costs.** In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

(f) **Filing of certified final order with court; effect of filing.** If a petition for judicial review of a final order is not filed in accordance with Section 75-71-609, or the petition is denied by the court, the administrator may file a certified copy of the final order with the clerk of a court in the jurisdiction where enforcement will be sought. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) **Enforcement by court; further civil penalty.** If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order and collect administrative civil penalties and costs imposed under the final order. The court may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount set forth in Section 75-71-613 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Amount of civil penalty described in this section, see § 75-71-613.

§ 75-71-605. Rules, forms, orders, interpretative opinions, and hearings.

(a) **Issuance and adoption of forms, orders, and rules.** The administrator may:

(1) Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

(2) By rule, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter; and

(3) By rule, classify securities, persons, and transactions and adopt different requirements for different classes. Offers to other persons as described in Section 75-71-202(13)(C) exempted by rule adopted under this chapter or order issued under this chapter may be conditioned by rule or order and any rule adopted as provided in Section 75-71-203 to provide an additional exemption from registration may include conditions on such exemption.

(b) **Findings and cooperation.** Under this chapter, a rule or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing rules and forms, Section 75-71-608 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) **Financial statements.** Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the administrator may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule adopted or order issued under this chapter may establish:

(1) Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the form and content of financial statements required under this chapter;

(2) Whether unconsolidated financial statements must be filed; and

(3) Whether required financial statements must be audited by an independent certified public accountant.

(d) **Interpretative opinions.** The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this chapter.

(e) **Effect of compliance.** A penalty under this chapter may not be imposed for, and liability does not arise from conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the administrator under this chapter.

(f) **Presumption for public hearings.** A hearing in an administrative proceeding under this chapter must be conducted in public unless the administrator for good cause consistent with this chapter determines that the hearing will not be so conducted.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (c)(1) by substituting "Investment Advisers Act" for "Investment Advisors Act." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — A former § 75-71-605 pertained to stay of administrative order. Present similar provisions are found in § 75-71-609.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Federal Aspects — Securities Exchange Act of 1934, 15 USCS § 78a et seq.

Investment Advisers Act of 1940, 15 USCS § 80b-1 et seq.

§ 75-71-606. Administrative files and opinions.

(a) **Public register of filings.** The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no action determinations issued under this chapter.

(b) **Public availability.** The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) **Copies of public records.** The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

Cross References — Definition of predecessor act, see § 75-71-102(22).

§ 75-71-607. Public records; confidentiality.

(a) **Presumption of public records.** Except as otherwise provided in subsection (b), records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination under such rules as the administrator prescribes.

(b) **Nonpublic records.** The following records are not public records and are not available for public examination under subsection (a):

(1) A record obtained by the administrator in connection with an audit or inspection under Section 75-71-411(d) or an investigation under Section 75-71-602;

(2) A part of a record filed in connection with a registration statement under Section 75-71-301 and Sections 75-71-303 through 75-71-305 or a record under Section 75-71-411(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) A record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure;

(4) A nonpublic record received from a person specified in Section 75-71-608(a);

(5) Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed; and

(6) A record obtained by the administrator through a designee of the administrator that a rule or order under this chapter determines has been:

(A) Expunged from the administrator's records by the designee; or

(B) Determined to be nonpublic or nondisclosable by that designee if the administrator finds the determination to be in the public interest and for the protection of investors.

(c) **Administrator discretion to disclose.** If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in Section 75-71-608(a), the administrator may disclose a record obtained in connection with an audit or inspection under Section 75-71-411(d) or a record obtained in connection with an investigation under Section 75-71-602.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-608. Uniformity and cooperation with other agencies.

(a) **Objective of uniformity.** The administrator may, in its discretion, cooperate, coordinate, consult, and, subject to Section 75-71-607, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking or insurance regulator, and a governmental law enforcement or regulatory agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(b) **Policies to consider.** In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this chapter, the administrator shall, in its discretion, take into consideration in carrying out the public interest the following general policies:

(1) Maximizing effectiveness of regulation for the protection of investors;

(2) Maximizing uniformity in federal and state regulatory standards; and

(3) Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) **Subjects for cooperation.** The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(1) Establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter;

(2) Developing and maintaining uniform forms;

(3) Conducting a joint examination or investigation;

(4) Holding a joint administrative hearing;

(5) Instituting and prosecuting a joint civil or administrative proceeding;

(6) Sharing and exchanging personnel;

(7) Coordinating registrations under Sections 75-71-301 and 75-71-401 through 75-71-404 and exemptions under Section 75-71-203;

(8) Sharing and exchanging records, subject to Section 75-71-607;

(9) Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;

(10) Formulating common systems and procedures;

(11) Notifying the public of proposed rules, forms, statements of policy, and guidelines;

(12) Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and

(13) Developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the Code section number assigned to this section by substituting the Code section number 75-71-608 for the Code section number 75-72-608, which is how it appeared as enacted by Section 1 of Chapter 528, Laws of 2009. The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-609. Judicial review.

(a) **Petition for judicial review of order; venue; scope of review.** Any person aggrieved by a final order of the administrator may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the administrator and thereupon the administrator shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part. The findings of the administrator as to the facts, if supported by competent material and substantial evidence, are conclusive.

(b) **Adduction of additional evidence.** If either party applies to the court for leave to adduce additional material evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the administrator, the court may order the additional evidence to be taken before the administrator and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. The administrator may modify his findings and order by reason of the additional evidence and shall file in court the additional evidence together with any modified or new findings or order.

(c) **Stay of administrative order under review.** The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court, operate as a stay of the administrator's order.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-610. Jurisdiction.

(a) **Sales and offers to sell.** Sections 75-71-301, 75-71-302, 75-71-401(a), 75-71-402(a), 75-71-403(a), 75-71-404(a), 75-71-501, 75-71-506, 75-71-509, and 75-71-510 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

(b) **Purchases and offers to purchase.** Sections 75-71-401(a), 75-71-402(a), 75-71-403(a), 75-71-404(a), 75-71-501, 75-71-506, 75-71-509, and 75-71-510 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

(c) **Offers in this state.** For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer:

(1) Originates from within this state; or

(2) Is directed by the offeror to a place in this state and received at the place to which it is directed.

(d) **Acceptances in this state.** For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:

(1) Is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and

(2) Has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) **Publications, radio, television, or electronic communications.** An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds (⅔) of its circulation outside this state during the previous twelve (12) months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program, or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

(1) The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(2) The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(3) The program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

(4) The program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

(f) **Investment advice and misrepresentations.** Sections 75-71-403(a), 75-71-404(a), 75-71-405(a), 75-71-502, 75-71-505, and 75-71-506 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 27 Am. Jur. Proof of Facts 3d 213, Use of Statistical Evidence in Proving Churning of Securities Accounts.

Law Reviews. Vaaler, Financing a small business in Mississippi: a practitioner's guide to federal and state securities exemptions. Part I, 63 Miss. L. J. 129 (Fall 1993); Part II, 63 Miss. L. J. 267 (Winter, 1993).

§ 75-71-611. Service of process.

(a) **Signed consent to service of process.** A consent to service of process complying with this section required by this chapter must be signed and filed in the form required by a rule or order under this chapter. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) **Conduct constituting appointment of agent for service.** If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

(c) **Procedure for service of process.** Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the administrator, but it is not effective unless:

(1) The plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) The plaintiff files an affidavit of compliance with this subsection (c) in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

(d) **Service in administrative proceedings or civil actions by administrator.** Service pursuant to subsection (c) may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

(e) **Opportunity to defend.** If process is served under subsection (c), the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-612. Severability clause.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:
"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

§ 75-71-613. Amounts of civil and criminal penalties.

(a) **Amount of civil disciplinary penalties imposed — registrants.** The amount of the civil penalty or fine described in Section 75-71-412(c) is a maximum of Twenty-five Thousand Dollars ($25,000.00) for each violation.

(b) **Amount of criminal penalties under Section 75-71-508.** The amount of the criminal penalty or fine described in Section 75-71-508 is not more than Twenty-five Thousand Dollars ($25,000.00) for each violation.

(c) **Amount of civil penalty under Section 75-71-603 — civil enforcement.** The amount of the civil penalty described in Section 75-71-603(b)(2)(C) is a maximum of Twenty-five Thousand Dollars ($25,000.00) for each violation, provided that an additional civil penalty may be imposed up to a maximum of Fifteen Thousand Dollars ($15,000.00) for violations of the chapter committed against elders or disabled persons.

(d) **Amount of civil penalty and further civil penalty under Section 75-71-604 — administrative enforcement.** (1) The amount of the civil penalty described in Section 75-71-604(d) is a maximum of Twenty-five Thousand Dollars ($25,000.00) for each violation, provided that an additional civil penalty may be imposed up to a maximum of Fifteen Thousand Dollars ($15,000.00) for violations of the chapter committed against elders or disabled persons.

(2) The amount of the further civil penalty described in Section 75-71-604(g) is a maximum of Twenty-five Thousand Dollars ($25,000.00) for each violation.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

ARTICLE 7.

TRANSITION.

SEC.
75-71-701. Application of chapter to existing proceeding and existing rights and duties.
75-71-703 through 75-71-735. Repealed

§ 75-71-701. Application of chapter to existing proceeding and existing rights and duties.

(a) **Applicability of predecessor chapter to pending proceedings and existing rights.** The predecessor chapter exclusively governs all actions or proceedings that are pending on January 1, 2010, or may be instituted on the basis of conduct occurring before January 1, 2010, but a civil action may not be maintained to enforce any liability under the predecessor chapter unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after January 1, 2010, whichever is earlier.

(b) **Continued effectiveness under predecessor chapter.** All effective registrations under the predecessor chapter, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no-action determinations, and conditions imposed on the registrations under the predecessor chapter remain in effect while they would have remained in effect if this chapter had not been enacted. They are considered to have been filed, issued, or imposed under this chapter, but are exclusively governed by the predecessor chapter.

(c) **Applicability of predecessor chapter to offers or sales.** The predecessor chapter exclusively applies to an offer or sale made within one (1) year after January 1, 2010, pursuant to an offering made in good faith before January 1, 2010, on the basis of an exemption available under the predecessor chapter.

(d) For the purposes of this chapter, "predecessor chapter" means Chapter 71 of Title 75, Mississippi Code of 1972, as it existed on December 31, 2009.

SOURCES: Laws, 2009, ch. 528, § 1, eff from and after Jan. 1, 2010.

Editor's Note — A former § 75-71-701 pertained to service of process. Present similar provisions are found in § 75-71-611.

Laws of 2009, ch. 528, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2010."

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the following correction has been made; in the heading for (a), "predecessor act" was changed to "predecessor chapter."

§§ 75-71-703 through 75-71-735. Repealed.

Repealed by Laws, 2009, ch. 582, § 2, effective from and after January 1, 2010.

§ 75-71-703 [Laws, 1981, ch. 521, § 414, eff from and after July 1, 1981.]

§ 75-71-705 [Laws, 1981, ch. 521, § 414, eff from and after July 1, 1981.]

§ 75-71-707 [Laws, 1981, ch. 521, § 407, eff from and after July 1, 1981.]

§ 75-71-709 [Laws, 1981, ch. 521, § 407, eff from and after July 1, 1981.]

§ 75-71-711 [Laws, 1981, ch. 521, § 407, eff from and after July 1, 1981.]

§ 75-71-713 [Laws, 1981, ch. 521, § 407, eff from and after July 1, 1981.]

§ 75-71-715 [Laws, 1981, ch. 521, § 408; Laws, 1987, ch. 477, § 15; Laws, 1989, ch. 435, § 1; Laws, 1990, ch. 352, § 13, eff from and after passage (approved March 12, 1990).]

§ 75-71-717 [Laws, 1981, ch. 521, § 410; Laws, 1987, ch. 477, § 16, eff from and after July 1, 1987.]

§ 75-71-719 [Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.]

§ 75-71-721 [Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.]

§ 75-71-723 [Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.]

§ 75-71-725 [Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.]

§ 75-71-727 [Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.]

§ 75-71-729 [Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.]

§ 75-71-731 [Laws, 1981, ch. 521, § 410, eff from and after July 1, 1981.]

§ 75-71-733 [Laws, 1981, ch. 521, § 409, eff from and after July 1, 1981.]

§ 75-71-735 [Laws, 1981, ch. 521, § 409, eff from and after July 1, 1981.]

Editor's Note — Former § 75-71-703 provided that a violation of the chapter was equivalent to appoint of the secretary of state as agent for service of civil process. Present provisions pertaining to service of process can be found in § 75-71-611.

Former § 75-71-705 pertained to continuance to allow opportunity to defend when service of process is on secretary of state as agent. Present similar provisions are found in § 75-71-611.

Former § 75-71-707 pertained to investigations by the secretary of state. Present similar provisions are found in § 75-71-602.

Former § 75-71-709 pertained to the powers of the secretary of state as to witnesses and evidence. Present similar provisions are found in § 75-71-602.

Former § 75-71-711 pertained to application to the court for order compelling obedience of witnesses. Present similar provisions are found in § 75-71-602.

Former § 75-71-713 pertained to immunity of witnesses compelled to give evidence. Present similar provisions are found in § 75-71-602.

Former § 75-71-715 pertained to the authority of the secretary of state to issues cease and desist orders, impose administrative penalties or sue for injunction, restraining order or mandamus, and orders of rescission, restitution or disgorgement, and civil penalties. Present similar provisions are found in § 75-71-604.

Former § 75-71-717 pertained to liability to buyers for illegal or fraudulent sales or offers. Present similar provisions are found in § 75-71-509.

Former § 75-71-719 pertained to persons jointly and severally liable with seller and contribution. Present similar provisions are found in § 75-71-509.

Former § 75-71-721 pertained to time for making tender specified in former §§ 75-71-717 through 75-71-731.

Former § 75-71-723 pertained to survival of causes of action. Present similar provisions are found in § 75-71-509.

Former § 75-71-725 pertained to limitations of actions. Present similar provisions are found in § 75-71-509.

Former § 75-71-727 pertained to prohibition against suit on illegal contract. Present similar provisions are found in § 75-71-509.

Former § 75-71-729 provided that provisions waiving compliance with chapter are void. Present similar provisions are found in § 75-71-509.

Former § 75-71-731 provided that rights and remedies of chapter are additional. Present similar provisions are found in § 75-71-509.

Former § 75-71-733 provided power of state to punish crimes was not limited by chapter. Present similar provisions are found in § 75-71-508.

Former § 75-71-735 pertained to penalties for violation of chapter. Present provisions pertaining to criminal penalties are found in § 75-71-613.

CHAPTER 72

Business Takeovers

General Provisions. [Repealed]
Business Tender Offer Law of 1980 75-72-101

GENERAL PROVISIONS
[REPEALED]

Sec.
75-72-1 through 75-72-23. Repealed.

§§ 75-72-1 through 75-72-23. Repealed.

Repealed by Laws, 1980, ch. 418, § 12, eff from and after July 1, 1980.
§ 75-72-1 through § 75-72-23. [En, Laws, 1977, ch. 339, §§ 1-12]

Editor's Note — Former §§ 75-72-1 through 75-72-23 constituted the Mississippi Business Takeover Act of 1977, setting forth procedures to be followed for the takeover of businesses in Mississippi.

BUSINESS TENDER OFFER LAW OF 1980

Sec.
75-72-101. Short title.
75-72-103. Definitions.
75-72-104. Transactions exempted from registration requirements.
75-72-105. Disclosure statements required for tender offer; amendment of statements.
75-72-107. Time for filing and delivery of materials; disclosure statement; misleading or untrue statements prohibited.
75-72-109. Fraudulent, deceptive and manipulative acts prohibited.
75-72-111. Withdrawals or variations of offers.
75-72-113. Repealed.
75-72-115. Administration; rules and regulations.
75-72-117. Filing fee for disclosure statements.
75-72-119. Investigation of violations; enforcement.
75-72-121. Penalties.

§ 75-72-101. Short title.

Sections 75-72-101 through 75-72-121 may be cited as the "Mississippi Business Tender Offer Law of 1980."

SOURCES: Laws, 1980, ch. 418, § 1, eff from and after July 1, 1980.

Cross References — Securities Law, see § 75-71-101 et seq.

Orders by Secretary of State exempting from registration requirements offers found to meet or not to be comprehended within purposes of §§ 75-72-101 through 75-72-121, see § 75-72-104.

Prohibition against solicitation of any offeree of tender offer, or acquisition of any equity security of subject company pursuant to tender offer, not effective or exempt under §§ 75-72-101 through 75-72-121, see § 75-72-105.

Business Corporation Law, see § 79-4-1.01 et seq.

Consolidation or merger of existing banks, see § 81-5-85.

RESEARCH REFERENCES

ALR. Lockup option defense to hostile corporate takeovers. 66 A.L.R.4th 180.

Am Jur. 19 Am Jur 2d Corporations § 2228.

Am. Jur. 2d, Securities Regulation—Federal § 680 et seq.

69A Am. Jur. 2d, Securities Regulation—State §§ 214 through 220.

CJS. 79A C.J.S., Securities Regulation and Commodity Futures Trading Regulation § 137 et seq.

Practice References. Fox and Fox, Corporate Acquisitions and Mergers (Matthew Bender).

§ 75-72-103. Definitions.

The following words and phrases shall have the meanings ascribed herein, unless the context clearly otherwise requires:

(a) "Affiliate" of a person means a person controlling, controlled by, or under common control with that person.

(b) "Associate" of a person means a person acting jointly or in concert with that person for the purpose of acquiring, holding, or disposing of, or exercising any voting rights attached to, the equity securities of a subject company.

(c) "Control," including the terms "controlling," "controlled by" and "under common control with," means the possession of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.

(d) "Equity security" means:

(i) Any stock or similar security carrying, at the time of the tender offer, the right to vote on any matter by virtue of the articles of incorporation, bylaws or governing instrument of the subject company or the right to vote for directors or persons performing substantially similar functions by operation of law.

(ii) Any security convertible into such stock or similar security.

(iii) Any warrant or right to purchase such stock or similar security.

(iv) Any security carrying any warrant or right to purchase such stock or similar security.

(v) Any other security which for the protection of investors is deemed an equity security pursuant to regulation of the Secretary of State.

(e) "Bidder" means a person who makes a tender offer or on whose behalf a tender offer is made, and includes all affiliates and associates of that person. The term does not include a financial institution or broker-dealer lending funds or extending credit in the ordinary course of its business or any accountant, attorney, financial institution, broker-dealer, investment adviser, fiduciary, newspaper or magazine of general circulation, consultant, or other person furnishing information, services, or advice to, or performing ministerial or administrative duties for a person pursuant to the unsolicited request, or a general contract for advice to, such person, and not otherwise participating in the tender offer.

(f) "Offeree" means a record of beneficial owner of equity securities which a bidder acquires or offers to acquire in connection with a tender offer.

(g) "Person" means an individual, corporation, association, partnership, trust or other entity.

(h) "Tender offer" means any offer to acquire or the acquisition of any equity security of a subject company, pursuant to a tender offer or request or invitation for tenders, if after acquisition the bidder would be directly or indirectly a record or beneficial owner of more than five percent (5%) of any class of the outstanding equity securities of the subject company.

(i) "Subject company" means a corporation or other issuer of equity securities which has at least twenty percent (20%) of its equity securities beneficially owned by residents of this state and owns or controls assets located in this state which have a fair market value in excess of One Million Dollars ($1,000,000.00), except that subject company shall not include any state or national bank or any savings and loan association.

(j) "Securities law" refers to the Mississippi Securities Law, Section 75-71-101 et seq.

(k) "Beneficial owner" includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has shares or has the right to acquire:

(i) Voting power which includes the power to vote, or to direct the voting of, an equity security; or

(ii) Investment power which includes the power to dispose, or to direct the disposition of, an equity security.

SOURCES: Laws, 1980, ch. 418, § 2; Laws, 1987, ch. 478, § 1, eff from and after July 1, 1987.

RESEARCH REFERENCES

Am Jur. Am. Jur. 2d, Securities Regulation—Federal § 680 et seq.

69A Am. Jur. 2d, Securities Regulation—State §§ 214 through 220.

CJS. 79A C.J.S., Securities Regulation and Commodity Futures Trading Regulation § 137 et seq.

Practice References. Fox and Fox, Corporate Acquisitions and Mergers (Matthew Bender).

§ 75-72-104. Transactions exempted from registration requirements.

The following transactions are exempted from the registration requirements of this chapter.

(a) Any offer made by an issuer to purchase its own equity securities or the equity securities of a subsidiary at least two-thirds (⅔) of the equity securities of which are owned either of record or beneficially by the issuer;

(b) An offer effected by or through a broker-dealer in the ordinary course of his business without solicitation of offers to sell equity securities of the subject company;

(c) An offer made to the owners of equity securities of a subject company with less than fifty (50) owners of record at the time of the offer;

(d) An offer or offers to purchase equity securities which, if accepted, will result in the offeror's purchasing two percent (2%) or less of the outstanding equity securities of the same class during the preceding twelve-month period;

(e) An offer in which the consideration consists, in whole or in part, of securities registered under the United States Securities Act of 1933;

(f) An offer which the Secretary of State by order, after notice to the offeror and to the subject company and opportunity to respond, shall exempt from the provisions of this law as not being made, or to be made, for the purpose of, and not having the effect of, or to have the effect of, changing or influencing the control of the subject company, or otherwise as not comprehended within the purposes of Sections 75-72-101 through 75-72-121; or

(g) An offer which is subject to substantive administrative review of its terms and conditions by a federal or state agency and which the Secretary of State determines by rule, regulation or order has met the purposes of Sections 75-72-101 through 75-72-121.

SOURCES: Laws, 1987, ch. 478, § 2, eff from and after July 1, 1987.

Federal Aspects — The Securities Act of 1933 is codified at 15 USCS § 77a et seq.

§ 75-72-105. Disclosure statements required for tender offer; amendment of statements.

(1) No person shall make a tender offer involving a subject company unless the tender offer is effective or exempted under Sections 75-72-101 through 75-72-121.

(2) A tender offer shall become effective under Sections 75-72-101 through 75-72-121 on the day upon which the bidder (a) files with the Secretary of State a disclosure statement containing the information prescribed in subsection (3) of this section, a consent by the bidder to service of process, and the filing fee specified in Section 75-72-117; (b) delivers a copy of the disclosure statement or any required amendment thereto to the subject company at its principal office; and (c) publicly discloses the material terms of the proposed offer.

(3) The disclosure statement shall be filed on Schedule 14D-1, as such schedule is described in the United States Securities Exchange Act of 1934, and shall contain all amendments thereto.

If there is any material change in any of the information set forth in any disclosure statement or exhibit filed under this section, the person who filed such disclosure statement shall:

(a) Promptly file an amendment of the disclosure statement or exhibit with the Secretary of State; and

(b) Not later than the date of filing of such amendment, hand deliver a copy of the amendment to the subject company at its principal office.

(4) If the bidder or the subject company is a public utility corporation subject to regulation by the Public Service Commission of the State of Mississippi, the Secretary of State shall forthwith, upon receipt of the filing required under subsection (2) of this section, furnish a copy of such filing to the regulatory body having jurisdiction over the bidder or subject company.

(5) If the bidder or subject company is a domestic insurance company subject to regulation by the Commissioner of Insurance of the State of Mississippi, the said commissioner shall, for all purposes of this section, be substituted for the Secretary of State. This section shall not be construed to limit or modify in any way any responsibility, authority, power or jurisdiction of the Secretary of State or the Commissioner of Insurance pursuant to any other section of the Mississippi Code of 1972.

SOURCES: Laws, 1980, ch. 418, § 3; Laws, 1987, ch. 478, § 3, eff from and after July 1, 1987.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in subsection (2) by deleting the subdivision (a) designation preceding "the bidder" and inserting it thereafter and by inserting a semicolon preceding the subdivision (b) designation. The Joint Committee ratified the corrections at its August 5, 2016, meeting.

Cross References — Penalty for making tender offer without filing disclosure statement, see § 75-72-121.

Public Service Commission, generally, see § 77-1-1 et seq.

Commissioner of insurance, generally, see § 83-1-3.

Federal Aspects — The Securities Exchange Act of 1934 is codified at 15 USCS § 78a et seq.

RESEARCH REFERENCES

ALR. Duty to disclose material facts to stock purchaser. 80 A.L.R.3d 13.

Am Jur. Am. Jur. 2d, Securities Regulation—Federal § 680 et seq.

69A Am. Jur. 2d, Securities Regulation—State §§ 214 through 220.

CJS. 79A C.J.S., Securities Regulation and Commodity Futures Trading Regulation § 137 et seq.

§ 75-72-107. Time for filing and delivery of materials; disclosure statement; misleading or untrue statements prohibited.

(1) Copies of all advertisements, circulars, letters or other materials published by the bidder, the subject company or any person who makes a solicitation or recommendation to any offeree in connection with the tender offer (except a person who the term "bidder" does not include in accordance with Section 75-72-103(e)), soliciting or requesting the acceptance or rejection of the tender offer, with the exception of the initial press release by the bidder to the wire services announcing the intention to make a tender offer as contemplated in Section 75-72-105 shall be filed with the secretary of state and hand delivered to the subject company and the bidder no later than the day (or if such day is not a business day, then on the next succeeding business day) on which copies of the materials are first published or sent or given to any offeree. The person filing materials under this section shall, unless said person shall theretofore have filed a disclosure statement under this or any other section of Sections 75-72-101 through 75-72-121, file with said materials a disclosure statement, and consent by said person to service of process and the filing fee specified in Section 75-72-117. Unless the person filing a disclosure statement under this section shall theretofore have filed a disclosure statement under Section 75-72-105, the form of the disclosure statement filed under this section shall be schedule 14D-9, as said schedule is described in the United States Securities Exchange Act of 1934, and shall contain all exhibits thereto. If there is any material change in any of the information set forth in any disclosure statement or exhibit filed under this section, the person who filed said disclosure statement shall promptly file an amendment of the disclosure statement or exhibit with the secretary of state and, not later than the date of said filing of that amendment, hand deliver a copy of the amendment to the subject company and the bidder.

(2) The materials described in subsection (1) of this section shall not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

SOURCES: Laws, 1980, ch. 418, § 4, eff from and after July 1, 1980.

Cross References — Penalties for false or misleading statements, see § 75-72-121.

Federal Aspects — The Securities Exchange Act of 1934 is codified at 15 USCS § 78a et seq.

RESEARCH REFERENCES

ALR. Duty to disclose material facts to stock purchaser. 80 A.L.R.3d 13.

Am Jur. Am. Jur. 2d, Securities Regulation—Federal § 680 et seq.

69A Am. Jur. 2d, Securities Regulation—State §§ 214 through 220.

CJS. 79A C.J.S., Securities Regulation and Commodity Futures Trading Regulation § 137 et seq.

§ 75-72-109. Fraudulent, deceptive and manipulative acts prohibited.

No person shall engage in any fraudulent, deceptive or manipulative acts or practices in connection with a tender offer. Fraudulent, deceptive and manipulative acts or practices include, without limitation:

(a) Solicitation of any offeree for acceptance or rejection of a tender offer, or acquisition of any equity security of a subject company pursuant to a tender offer, that is not effective or exempt under Sections 75-72-101 through 75-72-121.

(b) Publication or use in connection with the tender offer of any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, but not including the mailing by a subject company to the record or beneficial owners of its equity securities or solicitation materials published and furnished to the subject company for transmittal to its security holders by the bidder.

(c) The direct or indirect purchase, or the making of any arrangement to purchase, any security that is the subject of a tender offer (or any other security which is immediately convertible into or exchangeable for such security), otherwise than pursuant to such tender offer, from the date such tender offer is first published or sent or given to security holders until the expiration of the period, including any extensions thereof, during which securities tendered pursuant to such tender offer may, by the terms of such offer, be accepted or rejected; provided, however, that if such person is the owner of another security which is immediately convertible into or exchangeable for the security which is the subject of the offer, his subsequent exercise of his right of conversion or exchange with respect to such other security shall not be prohibited and this section shall not prohibit the purchase of any security pursuant to a stock option plan approved by security holders.

(d) Hold such tender offer open for less than twenty (20) business days from the date such tender offer is first published or sent or given to security holders; provided, however, that a tender offer by the issuer of the class of equity securities being sought, or by an affiliate of such issuer, which is not made in anticipation of or in response to another person's tender offer for securities of the same class, shall be held open for not less than fifteen (15) business days from the date such tender offer is first published or sent or given to security holders.

(e) Failure to offer the same or substantially equivalent consideration to all offerees pursuant to a tender offer.

(f) Failure to make the offer available to all holders of the class of equity securities subject to the tender offer, except that a bidder shall not be prohibited from making a tender offer which is not extended to security holders residing in jurisdictions having laws which render such tender offer unlawful or which the bidder in good faith determines may render such tender offer unlawful.

SOURCES: Laws, 1980, ch. 418, § 5; Laws, 1987, ch. 478, § 4, eff from and after July 1, 1987.

RESEARCH REFERENCES

ALR. Proxies provision of Federal Securities Exchange Act, § 14 (15 USC § 78n). 55 A.L.R. 1126.

Am Jur. Am. Jur. 2d, Securities Regulation—Federal § 680 et seq.

69A Am. Jur. 2d, Securities Regulation—State §§ 214 through 220.

CJS. 79A C.J.S., Securities Regulation and Commodity Futures Trading Regulation § 137 et seq.

§ 75-72-111. Withdrawals or variations of offers.

(1) A bidder shall provide that any equity securities of a subject company deposited or tendered pursuant to a tender offer may be withdrawn by or on behalf of any person who has deposited securities pursuant to the tender offer: (a) at any time until the expiration of fifteen (15) business days from the date of such tender offer was first published or sent or given to security holders; and (b) on the date and until the expiration of ten (10) business days following the date of another bidder's tender offer is first published or sent or given to security holders for securities of the same class, provided that the bidder has received notice or otherwise has knowledge of the commencement of such other tender offer and, provided further, that withdrawal may only be effected with respect to securities which have not been accepted for payment in the manner set forth in the bidder's tender offer prior to the date such other tender offer is first published or sent or given to security holders; and (c) at any time after sixty (60) days from the date the original tender offer was first published or sent or given to security holders. The time periods for withdrawal rights pursuant to this section shall be computed on a concurrent, as opposed to a consecutive, basis.

(2) If a bidder makes a tender offer for less than all the outstanding equity securities of any class, and if the number of securities deposited or tendered pursuant thereto, within ten (10) days after the offer is first published or sent or given to security holders, or at the written election of the bidder any period which exceeds such ten (10) days and/or any period which exceeds ten (10) days from the date that notice of an increase in the consideration offered is first published or sent or given to offerees, is greater than the number the offeror has offered to accept and pay for, the securities shall be accepted pro rata, disregarding fractions, according to the number of securities deposited or tendered by each offeree.

(3) If a bidder varies the terms of a tender's offer before its expiration date by increasing the consideration offered to the offerees, the bidder shall pay the increased consideration for all equity securities accepted whether the securities have been accepted by the bidder before or after the variation in the terms of the offer.

(4) No bidder shall make a tender offer at any time when an injunctive proceeding that has not been finally determined has been brought by the secretary of state against the bidder for violation of Sections 75-72-101 through 75-72-121 unless the bidder shall disclose the pendency of that proceeding in the bidder's disclosure statement filed under Section 75-72-101 through 75-72-121 and in the tender offer materials first published or sent or given to offerees.

SOURCES: Laws, 1980, ch. 418, § 6, eff from and after July 1, 1980.

RESEARCH REFERENCES

Am Jur. Am. Jur. 2d, Securities Regulation—Federal § 680 et seq.

69A Am. Jur. 2d, Securities Regulation—State §§ 214 through 220.

CJS. 79A C.J.S., Securities Regulation and Commodity Futures Trading Regulation § 137 et seq.

§ 75-72-113. Repealed.

Repealed by Laws, 1987, ch. 478, § 5, eff from and after July 1, 1987. [En Laws, 1980, ch. 418, § 7]

Editor's Note — Former § 75-72-113 defined "tender offer for control" and set forth the requirements and procedures for the making of any tender offer for control of a subject company.

§ 75-72-115. Administration; rules and regulations.

Sections 75-72-101 through 75-72-121 shall be administered by the secretary of state, who may promulgate regulations necessary to carry out the purposes of Sections 75-72-101 through 75-72-121, and shall promulgate such rules as may be necessary to ensure that the application and administration of Sections 75-72-101 through 75-72-121 is not inconsistent with the regulation of tender offers under the United States Securities Exchange Act of 1934.

SOURCES: Laws, 1980, ch. 418, § 8, eff from and after July 1, 1980.

Cross References — Duties of secretary of state, generally, see § 7-3-5.

Federal Aspects — The Securities Exchange Act of 1934 is codified at 15 USCS § 78a et seq.

§ 75-72-117. Filing fee for disclosure statements.

The secretary of state shall charge a filing fee of five hundred dollars ($500.00) for each disclosure statement filed under Sections 75-72-101 through 75-72-121.

SOURCES: Laws, 1980, ch. 418, § 9, eff from and after July 1, 1980.

Cross References — Fees to be collected by the secretary of state, generally, see § 25-7-81.

Requirement of fee for effectiveness of tender offer, see § 75-72-105.

§ 75-72-119. Investigation of violations; enforcement.

(1) Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Sections 75-72-101 through 75-72-121 or any regulation adopted under Sections 75-72-101 through 75-72-121, the secretary of state may investigate and, in connection with such investigation, shall have the same powers to compel the production of books, papers and other documents and to administer oaths and conduct examinations as are granted to the secretary of state under the securities law. He may bring an action in any chancery court in the name and on behalf of the state against any person or persons participating in a violation, seeking such relief as the court may grant, including, without limitation, to enjoin those persons from continuing or doing any act in violation of Sections 75-72-101 through 75-72-121, to enforce compliance, to grant a permanent or preliminary injunction or temporary restraining order, or to order rescission of any sales, tenders for sale, purchases or tenders for purchase of equity securities determined to be unlawful under Sections 75-72-101 through 75-72-121 or any regulation of the secretary of state.

(2) Whenever any person has engaged in or is about to engage in any act or practice constituting a violation of Sections 75-72-101 through 75-72-121 or any regulation or order adopted thereunder, the bidder, subject company, or any record or beneficial owner of an equity security of the subject company may bring an action in the county where the subject company has its executive offices or a material portion of its total assets in the state seeking such relief as the court may grant, including, without limitation, to enjoin that person from continuing or doing any act in violation of Sections 75-72-101 through 75-72-121, to enforce compliance, to grant a permanent or preliminary injunction or temporary restraining order, to order rescission of any sales, tenders for sale, purchases, or tenders for purchase of equity securities determined to be unlawful under Sections 75-72-101 through 75-72-121 or any regulation of the secretary of state, or, in the case of record or beneficial owners of equity securities, damages.

(3) Every person who directly or indirectly controls a person liable under subsection (2) of this section is also liable jointly or severally with and to the same extent as that person, unless he did not know of the existence of the facts by reason of which the liability is alleged to exist.

(4) No action may be maintained under this section unless commenced before the expiration of three (3) years after the discovery of the facts constituting the violation.

(5) The rights and remedies under Sections 75-72-101 through 75-72-121 are in addition to any other rights or remedies that may exist at law or in equity.

SOURCES: Laws, 1980, ch. 418, § 10, eff from and after July 1, 1980.

Cross References — Injunctions, generally, see § 11-13-1.
Limitations of actions, generally, see § 15-1-1 et seq.

RESEARCH REFERENCES

ALR. Proxies provision of Federal Securities Exchange Act, § 14 (15 USC § 78n). 55 A.L.R. 1126.

Attorney's preparation of legal document incident to sale of securities as rendering him liable under state securities regulation statutes. 62 A.L.R.3d 252.

CJS. 79A C.J.S., Securities Regulation and Commodity Futures Trading Regulation § 137 et seq.

§ 75-72-121. Penalties.

(1) Any person who makes a tender offer involving a subject company without filing a disclosure statement required under Section 75-72-105 may be imprisoned for a period not to exceed one (1) year, or fined an amount not to exceed five thousand dollars ($5,000.00) per day, while the unlawful tender offer is in effect, or both.

(2) Any person who, in connection with a tender offer, knowingly makes or causes to be made to the secretary of state any representation of a material fact which he knows to be false, or knowingly withholds or causes to be withheld from the secretary of state any information the disclosure of which he knows is necessary, in light of the circumstances, to make not misleading other representations of material facts made or caused to be made by him to the secretary of state, may be imprisoned for a period of not less than one (1) nor more than five (5) years, or fined an amount not to exceed twenty-five thousand dollars ($25,000.00) or both.

(3) Any person who, in connection with a tender offer, knowingly publishes or sends or gives, or causes to be published, or sends or gives any representation of a material fact which he knows to be false, or knowingly omits to publish information which he knows is necessary, in light of the circumstances, to make not misleading other representations of material facts published, or sends or gives or causes to be published, or sends or gives by him, may be imprisoned for a period of not less than one (1) nor more than five (5) years, or fined an amount not to exceed twenty-five thousand dollars ($25,000.00), or both; provided, however, that this subsection shall not apply to the mailing by a subject company to the record or beneficial owners of its equity securities of solicitation material published and furnished to the subject company for transmittal to its security holders by the bidder.

(4) Any person who knowingly violates any provision of Sections 75-72-101 through 75-72-121 for which a specific criminal penalty is not otherwise provided may be imprisoned for a period not to exceed one (1) year, or fined an amount not to exceed five thousand dollars ($5,000.00), or both.

(5) Nothing herein limits the power of the state to punish any person for conduct which constitutes a crime under any other statute.

SOURCES: Laws, 1980, ch. 418, § 11, eff from and after July 1, 1980.

RESEARCH REFERENCES

ALR. Proxies provision of Federal Securities Exchange Act, § 14 (15 USC § 78n). 55 A.L.R. 1126.

CJS. 79A C.J.S., Securities Regulation and Commodity Futures Trading Regulation § 137 et seq.

CHAPTER 73

Hotels and Innkeepers

SEC.
75-73-1. Copy of law to be posted in all hotels and inns.
75-73-3. Penalty.
75-73-5. Hotels and innkeepers; liability for valuables of guests.
75-73-7. Loss of property; maximum allowed; guest's responsibility.
75-73-9. Obtaining board and lodging with intent to defraud.
75-73-11. Proof of fraudulent intent; what constitutes prima facie evidence.
75-73-13. Hotel authorities may eject violators of the law.
75-73-15. Innkeepers to have lien on baggage.
75-73-17. How baggage sold, when, and to whom.

§ 75-73-1. Copy of law to be posted in all hotels and inns.

A copy of Sections 75-73-3 and 75-73-5 shall be posted and kept posted in a conspicuous place in the general office or lobby, provided for the use of guests and patrons of every public inn and hotel.

SOURCES: Codes, Hemingway's 1917, § 2065; 1930, § 5105; 1942, § 7150; Laws, 1910, ch. 163.

Cross References — Penalty for failure to comply with this section, see § 75-73-3.

RESEARCH REFERENCES

ALR. Effect of notice limiting liability for valuables or effects of guest in hotel. 9 A.L.R.2d 818.

Am Jur. 9A Am. Jur. Legal Forms 2d, Hotels, Motels, and Restaurants § 137:22 (recitals on envelope used for deposit of valuables).

9A Am. Jur. Legal Forms 2d, Hotels, Motels, and Restaurants § 137:23 (claim check delivered to guest for deposit of valuables).

6 Am. Jur. Proof of Facts, Innkeepers, Proof No. 1 (status of premises as hotel).

§ 75-73-3. Penalty.

Any innkeeper or hotel keeper or manager who shall fail, neglect or refuse to comply with Section 75-73-1 of this chapter shall be guilty of a misdemeanor and on conviction shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars. Each day's failure, neglect or refusal shall constitute a separate offense, and may be punished as such.

SOURCES: Codes, Hemingway's 1917, § 2065; 1930, § 5106; 1942, § 7151; Laws, 1910, ch. 163.

Cross References — Requirement to post this section and § 75-73-5 for use of guests and patrons of every public inn and hotel, see § 75-73-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-73-5. Hotels and innkeepers; liability for valuables of guests.

No innkeeper, whether individual, partnership or corporation, who constantly has in his inn an iron safe or suitable vault in good order and fit for the safe custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones, personal ornaments, railroad mileage books or tickets, negotiable or valuable papers, bullion, and who keeps on the doors of the sleeping rooms used by his guests, locks or bolts, and on the transoms and windows of said rooms suitable fastenings, shall be liable for the loss or injury to any such property suffered by any guest, unless such guest has offered to deliver the same to such innkeeper for custody in such iron safe or vault and such innkeeper has refused or omitted to take it and deposit it in such safe or vault for custody and to give such guest a receipt therefor.

Provided, however, that the innkeeper of any inn shall not be obliged to receive from any one guest for deposit in such safe or vault any property hereinbefore described exceeding a total value of five hundred dollars ($500.00), and shall not be liable for any excess of such property, whether received or not; but such innkeeper may, by special agreement with a guest, receive for deposit in such safe or vault any property on such terms as they may agree to in writing. Every innkeeper shall be liable for any loss of the above enumerated articles by a guest in his inn caused by the theft or negligence of the innkeeper or any of his servants.

SOURCES: Codes, Hemingway's 1917, § 2066; 1930, § 5107; 1942, § 7152; Laws, 1912, ch. 137.

Cross References — Requirement to post § 75-73-3 and this section for use of guests and patrons of ever public inn and hotel, see § 75-73-1.

Penalty for failure to post this section and § 75-73-3, see § 75-73-3.

JUDICIAL DECISIONS

1. In general.

Where the affidavit and proof showed that the alleged offense of obtaining food and lodging with intent to defraud was committed in 1914 and the prosecution was not commenced until 1918, the accused being within the jurisdiction of the court, not hiding, nor absconding, nor fleeing from justice, the prosecution was barred by limitation. Steele v. State, 121 Miss. 540, 83 So. 725 (1920).

RESEARCH REFERENCES

ALR. Effect of notice limiting liability for valuables or effects of guest in hotel. 9 A.L.R.2d 818.

Liability of innkeeper for loss or damage to property of a guest resulting from fire, 63 A.L.R.2d 495.

Statutory limitations upon innkeeper's liability as applicable where guest's property is lost or damaged through innkeeper's negligence. 37 A.L.R.3d 1276.

Liability of hotel, motel, or similar establishment for damage to or loss of guest's automobile left on premises. 52 A.L.R.3d 433.

Hotel or innkeeper's liability for refusal to honor reservation. 58 A.L.R.3d 369.

Construction and application of terms "jewelry" and "personal ornaments" as used in statute limiting innkeeper's liability for loss or damage to guest's property. 88 A.L.R.3d 979.

Liability of hotel or motel for guest's loss of money from room by theft or robbery committed by person other than defendant's servant. 28 A.L.R.4th 120.

Liability for loss of hat, coat, or other property deposited by customer in place of business. 54 A.L.R.5th 393.

Am Jur. 40A Am. Jur. 2d, Hotels, Motels, and Restaurants §§ 122 et seq.

4 Am. Jur. Pl & Pr Forms (Rev), Bailments, Form 56 (complaint for recovery of loss of property deposited in hotel safe).

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels and Restaurants, Forms 103, 104 (complaint for recovery of loss of property deposited in hotel safe); Forms 91-95 (complaint for loss of guest's property by theft); Forms 96, 97 (complaint for loss of guest's property by fire); Forms 101-106 (complaint for loss of guest's property in actual possession of proprietor); Forms 123, 124 (answer setting up defense denying guest status); Forms 126-128 (answer setting up defense of limitation of liability for loss of guest's property); Forms 154-157 (instructions to jury as to hotel proprietor's liability for loss of guest's property).

9A Am. Jur. Legal Forms 2d, Hotels, Motels, and Restaurants §§ 137:22 et seq. (provisions limiting liability for loss of or injury to property).

CJS. 43A C.J.S., Inns, Hotels, and Eating Places §§ 59, 60.

§ 75-73-7. Loss of property; maximum allowed; guest's responsibility.

The liability of the innkeeper of any inn, whether individual, partnership or corporation, for the loss of or injury to personal property placed by his guests under his care other than that described in Section 75-73-5 shall be that of a depository for hire. Provided, however, that in no case shall such liability exceed the sum of one hundred dollars ($100.00) for each trunk and contents; twenty-five dollars ($25.00) for each valise and contents, and five dollars ($5.00) for each box, bundle or package and contents so placed under his care, unless he shall have consented in writing with such guest to assume a greater liability; except that nothing herein shall prevent any guest of any hotel or inn from recovering at common law the actual value of the contents of any trunk, valise, box or package which, after being given into the care or custody of the hotel or innkeeper or placed in the rooms of a hotel or inn, shall be lost by or through theft, or the negligence, carelessness or omission of any hotel or innkeeper or his servant or employee, and not by or through the carelessness, negligence or omission of such guest.

SOURCES: Codes, Hemingway's 1917, § 2067; 1930, § 5108; 1942, § 7153; Laws, 1912, ch. 137.

JUDICIAL DECISIONS

1. In general.

Bell-hop, who reported for work drunk, was told to stay in dressing room until he sobered up, had his uniform removed by hotel manager, put on his civilian clothes and negligently started fire after lighting cigarette, was not servant of hotel, but mere licensee when he started fire, and his negligence was not negligence of hotel. Kerr v. Hudson Hotel Co., 204 Miss. 396, 37 So. 2d 630 (1948).

Prima facie presumption of negligence on part of hotel-keeper is created when guest shows delivery of his baggage and personal property into hotel room in good order and their subsequent loss; but on proof by hotel-keeper that loss was caused by fire, burden again shifts to guest to prove defendant hotel-keeper's negligence. Kerr v. Hudson Hotel Co., 204 Miss. 396, 37 So. 2d 630 (1948).

By virtue of this statute, liability of hotel for loss of goods of guest must be founded, if at all, upon failure to exercise that ordinary care required of bailee for hire. Kerr v. Hudson Hotel Co., 204 Miss. 396, 37 So. 2d 630 (1948).

By virtue of the provisions of this section, the liability of a hotel to the guest of certain companies, tendering an annual banquet and dance to their employees at the hotel, for damages to his car which an attendant allowed a stranger to take from the hotel's free parking lot, must be founded, if at all, upon a failure to exercise that ordinary care required of a bailee for hire as to the safety of the car in question, unless the hotel was merely a gratuitous bailee and liable only for gross negligence. Edwards Hotel Co. v. Terry, 185 Miss. 824, 187 So. 518 (1939).

Hotel was liable under common law for suitcase lost by negligence of porter. Edwards House v. Davis, 124 Miss. 485, 86 So. 849 (1921).

RESEARCH REFERENCES

ALR. Effect of notice limiting liability for valuables or effects of guest in hotel. 9 A.L.R.2d 818.

Statutory limitations upon innkeeper's liability as applicable where guest's property is lost or damaged through innkeeper's negligence. 37 A.L.R.3d 1276.

Liability of hotel, motel, or similar establishment for damage to or loss of guest's automobile left on premises. 52 A.L.R.3d 433.

Hotel or innkeeper's liability for refusal to honor reservation. 58 A.L.R.3d 369.

Construction and application of terms "jewelry" and "personal ornaments" as used in statute limiting innkeeper's liability for loss or damage to guest's property. 88 A.L.R.3d 979.

Liability of hotel or motel for guest's loss of money from room by theft or robbery committed by person other than defendant's servant. 28 A.L.R.4th 120.

Liability for loss of hat, coat, or other property deposited by customer in place of business. 54 A.L.R.5th 393.

Am Jur. 40A Am. Jur. 2d, Hotels, Motels, and Restaurants §§ 143 et seq.

9A Am. Jur. Legal Forms 2d, Hotels, Motels, and Restaurants §§ 137:22 et seq. (provisions limiting liability for loss of or injury to property).

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels and Restaurants, Forms 126-128 (answer defense of limitation of liability for loss of guest's property).

CJS. 43A C.J.S., Inns, Hotels, and Eating Places §§ 59, 60.

§ 75-73-9. Obtaining board and lodging with intent to defraud.

(1) Any person who shall, for himself or as the agent or representative of another or as an officer of a corporation, obtain food, lodging, money, property or other accommodations of a value less than Twenty-five Dollars ($25.00) at any hotel, motel, motor hotel, motor lodge, inn, boarding or eating house with intent to defraud the owner or keeper thereof, shall, upon conviction, be fined not less than Fifty Dollars ($50.00) and not exceeding Five Hundred Dollars ($500.00) or imprisoned in the county jail for a term not exceeding one (1) year, or both; but any person who shall, for himself or as the agent or representative

of another or as an officer of a corporation, obtain food, lodging, money, property or other accommodations of a value of Twenty-five Dollars ($25.00) or over at any hotel, motel, motor hotel, motor lodge, inn, boarding or eating house with intent to defraud the owner or keeper thereof shall, upon conviction, be fined not less than One Hundred Dollars ($100.00) and not exceeding One Thousand Dollars ($1,000.00) or imprisoned in the State Penitentiary for a term of one (1) year, or both. In case of a second and subsequent conviction of the offense described, regardless of the value of the food, lodging, money, property or other accommodations obtained, the punishment shall be by imprisonment in the State Penitentiary for a term of not exceeding two (2) years.

(2) No person shall remain in a hotel or motel where his term or stay has expired if the person has been given a separate written notice of his agreed departure date and checkout time at the time he registered in the hotel or motel, the person has signed such notice acknowledging his departure time, and the person has been given written notice at least three (3) hours prior to the time required to leave the hotel or motel room. Willful violations of this subsection shall be a misdemeanor punishable by a fine of not more than One Hundred Dollars ($100.00) and each violation shall be a separate offense. This subsection shall not apply in case of serious medical emergency requiring the room's continued use.

SOURCES: Codes, Hemingway's 1917, § 2068; 1930, § 5109; 1942, § 7154; Laws, 1912, ch. 137; Laws, 1964, ch. 370, § 1; Laws, 1984, ch. 434, § 1; reenacted, Laws, 1987, ch. 462, § 1, eff from and after passage (approved April 14, 1987).

Cross References — Criminal offenses of false pretenses and cheats, see §§ 97-19-39, 97-19-41.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Where the affidavit did not charge and the evidence did not tend to establish that defendant obtained food and lodging from a hotel with the intent to defraud it, conviction thereon was erroneous. Easterling v. State, 194 So. 289 (Miss. 1940).

The intent to defraud is a material part of the crime involved under this statute, and the omission thereof is fatal to the indictment or affidavit. Easterling v. State, 194 So. 289 (Miss. 1940).

This and the following section are to be construed together in determining whether there is fraudulent intent of a guest. Robinson v. State, 135 Miss. 774, 100 So. 377 (1924).

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hotels, Motels and Restaurants § 68.

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels and Restaurants, Forms 2, 3 (complaint to recover for board and lodging).

CJS. 43A C.J.S., Inns, Hotels, and Eating Places § 18.

Law Reviews. 1984 Mississippi Supreme Court Review: Property. 55 Miss. L. J. 135, March, 1985.

§ 75-73-11. Proof of fraudulent intent; what constitutes prima facie evidence.

Proof that lodging, food, money, property, or other accommodations were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, that the person refused or neglected to pay for such food, lodging or other accommodations, or that he absconded without paying or offering to pay for such food, lodging or other accommodations, or that he surreptitiously removed or attempted to move his baggage, or that he made, drew, issued, and delivered to the owner or keeper of any hotel, motel, motor hotel, motor lodge, inn, boarding or eating house, any check, draft or order on any bank or other depository in payment of food, lodging, money, property, or other accommodations, and has no funds or has insufficient funds on deposit to his credit in such bank or depository with which such check, draft, or order may be paid in full, and all other checks, drafts, or orders upon such funds then outstanding, shall be deemed prima facie proof of the fraudulent intent mentioned in Section 75-73-9. Provided, however, that this section shall not apply in cases where there has been an agreement for extension of credit made at the time or before the lodging, food, money, property, or other accommodations have been furnished.

SOURCES: Codes, Hemingway's 1917, § 2069; 1930, § 5110; 1942, § 7155; Laws, 1912, ch. 137; Laws, 1964, ch. 370, § 2, eff June 5, 1964.

JUDICIAL DECISIONS

1. In general.

This section should be construed with Code 1942, § 7154 [75-73-9], in determining whether there is fraudulent intent of a hotel guest. Robinson v. State, 135 Miss. 774, 100 So. 377 (1924).

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hotels, Motels and Restaurants § 68.

CJS. 43A C.J.S., Inns, Hotels, and Eating Places § 18.

§ 75-73-13. Hotel authorities may eject violators of the law.

(1) If any person be guilty of disorderly conduct or other conduct prohibited by law, or intoxication or any breach of the peace, or of the use of obscene or profane language on the premises of any hotel, or if any person register at said hotel under an assumed name, then the manager of said hotel or anyone who is at the time acting as said manager or for said manager may eject said person or persons from said hotel premises using only such force as may be necessary to accomplish the same, and may command the assistance of the

employees of said hotel to assist in said ejection and may cause any person violating the law to be detained and delivered to the proper authorities.

(2) If a person who has been given written notice of his agreed departure and checkout time at the time he registered in the hotel or motel, who has signed such notice acknowledging his checkout time, and who has been given written notice at least three (3) hours prior to the time required to leave the hotel or motel room remains in a hotel or motel room after his term or stay has expired, the manager of the hotel or motel or anyone who is at the time acting as said manager or for said manager may eject said person and other occupants and their personal belongings from said hotel or motel premises using the assistance of the appropriate lawful authority to accomplish the same. If the registered occupant is not present, the manager of the hotel or motel, or the person acting as or for said manager, shall make and sign a written, itemized inventory of the personal belongings in the room before same shall be removed, which inventory shall also be signed, as witness thereto, by the lawful authority assisting such hotel or motel manager. Such hotel or motel manager shall use reasonable care to preserve and protect such personal belongings for a period not longer than ten (10) days. No action for damages, or otherwise, shall be maintainable against the owners, operators or managers of a hotel or motel, or appropriate lawful authority for reasonable exercise of rights pursuant to Sections 75-73-9 and 75-73-13. This subsection shall not apply in case of serious medical emergency requiring the room's continued use.

SOURCES: Codes, 1930, § 5111; 1942, § 7156; Laws, 1922, ch. 263; Laws, 1984, ch. 434, § 2; reenacted and amended, Laws, 1987, ch. 462, § 2, eff from and after passage (approved April 14, 1987).

Cross References — Criminal offenses of obscenity, profanity and drunkenness, see § 97-29-47.

RESEARCH REFERENCES

Am Jur. 40A Am. Jur. 2d, Hotels, Motels and Restaurants § 57 et seq.

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels and Restaurants, Forms 11, 14, 17 (complaints for refusal to receive and lodge guest).

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels, and Restaurants, Form 16 (complaint, petition, or declaration — against hotel — wrongful eviction of hotel guest).

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels and Restaurants, Form 141 (instructions to jury on duty to receive guest).

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels and Restaurants, Forms 142, 143 (instructions to jury as to justification for refusal to receive and lodge guest).

CJS. 43A C.J.S., Inns, Hotels, and Eating Places §§ 22-25.

§ 75-73-15. Innkeepers to have lien on baggage.

Keepers of hotels, inns, boarding houses and restaurants shall have a lien on the goods and personal baggage of their guests and boarders to secure the payment of any money due from them for board and lodging and hotel accommodations; and may enforce the same by a seizure and sale of such goods and baggage, as hereinafter provided.

SOURCES: Codes, 1892, § 2697; 1906, § 3057; Hemingway's 1917, § 2399; 1930, § 5112; 1942, § 7157; Laws, 1928, ch. 67.

Cross References — Provisions relating to the sale of baggage, see § 75-73-17.
Liens, generally, see § 85-7-1 et seq.

RESEARCH REFERENCES

ALR. Modern views as to validity, under federal constitution, of state prejudgment attachment, garnishment, and replevin procedures, distraint procedures under landlords' or innkeepers' lien statutes, and like procedures authorizing summary seizure of property. 18 A.L.R. Fed. 223.

Am Jur. 40A Am. Jur. 2d, Hotels, Motels and Restaurants § 175 et seq.

9A Am. Jur. Legal Forms 2d, Hotels, Motels, and Restaurants § 137:16 (notice of lien and sale).

12 Am. Jur. Legal Forms 2d, Liens § 165:29 (notice of sale to satisfy lien-hotelkeepers' lien).

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels and Restaurants, Form 4 (notice of innkeeper's lien).

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels and Restaurants, Form 5 (affidavit in support of proceedings to enforce innkeeper's lien).

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels and Restaurants, Form 6 (warrant to enforce hotelman's lien).

CJS. 43A C.J.S., Inns, Hotels, and Eating Places §§ 26-31.

§ 75-73-17. How baggage sold, when, and to whom.

If the charges when due are not paid within ten (10) days after demand therefor, such hotel, inn, boarding house, or restaurant keeper, may, on giving ten (10) days' notice of the time and place of such sale by posting notice in two public places, one of which shall be in a public place in the hotel, boarding house, inn or restaurant, where such personal baggage or goods are seized, sell such goods and baggage to the highest bidder for cash, and apply the proceeds to the expense of keeping such goods and baggage, and of the sale thereof, and to the satisfaction, in whole or in part, as the case may be, of said lien. The balance of such proceeds, if any there be, shall be paid over to the owner thereof on demand. The demand herein first provided for to be made by the keeper upon the owner for the charges due, may be in person, or by letter, or writing duly stamped, addressed and mailed to such owner to his address if known to such keeper or to the address appearing on the register of such hotel, inn, boarding house or restaurant. The demand on the part of the owner for the residue or remainder shall be made within twelve (12) months from the date of sale of such goods or personal baggage. If not demanded within twelve (12) months after date of such sale, such residue or remainder shall be deposited with the chancery clerk of the county in which said hotel, inn, boarding house, or restaurant is located, together with a statement of the proprietor of such hotel, inn, boarding house or restaurant of the amount of the lien and costs in enforcing the same, together with a copy of the posted notice and the amount received from the sale of said property so sold at said sale. Said residue shall, by said chancery clerk, be credited to the general revenue fund of said county, subject to the right of said guest, or boarder, or their representatives to reclaim the same at any time within two years from and after the deposit of such residue with the said chancery clerk. Such sale shall be a perpetual bar to any action against said hotel, inn, boarding house, or restaurant keeper for the recovery of such goods or baggage, or of the value thereof, or for any damage growing out of the failure of such guest to receive such goods or personal baggage.

SOURCES: Codes, 1930, § 5113; 1942, § 7158; Laws, 1928, ch. 67.

RESEARCH REFERENCES

Am Jur. 40 Am. Jur. 2d, Hotels, Motels and Restaurants § 181.

47 Am. Jur. 2d, Judicial Sales § 1 et seq.

9A Am. Jur. Legal Forms 2d, Hotels, Motels, and Restaurants § 137:16 (notice of lien and sale).

13A Am. Jur. Pl & Pr Forms (Rev), Hotels, Motels and Restaurants, Form 7 (notice of sale of goods by hotelman to satisfy lien).

CJS. 43A C.J.S., Inns, Hotels, and Eating Places §§ 26-31.

CHAPTER 74

Youth Camps

Sec.	
75-74-1.	Short title.
75-74-3.	Definitions.
75-74-5.	General duties of youth camp operators.
75-74-7.	State board of health is principal authority on youth camp health and safety.
75-74-8.	Temporary licenses for nonresident or retired physicians or nurses to practice at youth camps.
75-74-9.	Promulgation of rules and regulations; advisory council on youth camp safety.
75-74-11.	Restrictions on operation or sponsorship of youth camps; license requirement; renewal of license [Repealed effective July 1, 2020].
75-74-13.	Repealed.
75-74-15.	Curriculum, program or ministry of youth camps unaffected.
75-74-17.	Penalties.
75-74-19.	Disposition of fees and penalties.

§ 75-74-1. Short title.

This chapter may be cited as the "Mississippi Youth Camp Safety and Health Law."

SOURCES: Laws, 1977, ch. 459, § 1, eff from and after July 1, 1977.

§ 75-74-3. Definitions.

In this chapter, unless the context requires a different definition:

(a) "Board" shall mean the State Board of Health.

(b) "Camper" shall mean any child six (6) to eighteen (18) years of age who is attending a youth camp.

(c) "Health officer" shall mean the state health officer, Mississippi State Board of Health.

(d) "Person" shall mean any individual, partnership, corporation, association or organization.

(e) "Youth camp" shall mean any camp operating on a permanent campsite for four (4) or more consecutive periods of twenty-four (24) hours, and accommodating twenty (20) or more children six (6) to eighteen (18) years of age; provided, however, athletic camps and hunting and fishing camps shall not be included in this definition.

(f) "Permanent campsite" shall mean a campground containing within the premises thereof permanent structures and installed facilities which are primarily used for camping purposes by a youth camp operator; provided, however, facilities owned by the State of Mississippi, any political subdivision thereof or any public or private university, college or junior college shall not be included in this definition.

(g) "Youth camp operator" shall mean any person who owns, operates, controls or supervises, whether or not for profit, a youth camp.

SOURCES: Laws, 1977, ch. 459, § 2, eff from and after July 1, 1977.

Cross References — Youth camps as defined in this section not a child residential home for purposes of Child Residential Home Notification Act, see § 43-16-3.

§ 75-74-5. General duties of youth camp operators.

Each youth camp operator shall provide each camper with safe and healthful conditions, facilities and equipment, free from recognized hazards which cause or may tend to cause death, serious illness or bodily harm.

SOURCES: Laws, 1977, ch. 459, § 3, eff from and after July 1, 1977.

§ 75-74-7. State board of health is principal authority on youth camp health and safety.

The State Board of Health is the principal authority in the state on matters relating to the condition of safety and health at youth camps in Mississippi. The board has the powers and duties set out in this chapter and all other powers necessary and convenient to carry out its responsibilities.

SOURCES: Laws, 1977, ch. 459, § 4, eff from and after July 1, 1977.

Cross References — General duties of state board of health, see § 41-3-15.

§ 75-74-8. Temporary licenses for nonresident or retired physicians or nurses to practice at youth camps.

(1) Any nonresident physician who is not licensed to practice medicine in this state and any resident physician who is retired from the active practice of medicine in this state may be issued a temporary license by the state board of medical licensure to practice medicine at a youth camp licensed by the State Board of Health under this chapter while serving as a volunteer at such a camp, provided that any such nonresident physician shall hold a valid license to practice medicine in another state and the medical licensing authority of that state shall certify to the board of medical licensure in writing that such license is in good standing, and that any such retired resident physician shall be in good standing with the board of medical licensure.

(2) Any nonresident registered nurse who is not licensed to practice nursing in this state and any resident registered nurse who is retired from the active practice of nursing in this state may be issued a temporary license by the Mississippi Board of Nursing to practice nursing at a youth camp licensed under this chapter by the State Board of Health while serving as a volunteer at such a camp, provided that any such nonresident nurse shall hold a valid license to practice nursing in another state and the nurse licensing authority of that state shall certify to the board of nursing in writing that such license is in good standing, and that any such retired resident nurse shall be in good standing with the board of nursing. The board of nursing shall be authorized to require any resident registered nurse who has been retired from the active

practice of nursing in this state for five (5) or more consecutive years to complete a nursing reorientation program prescribed by the board before the board will issue a temporary license to practice nursing at a youth camp to such nurse.

(3) A temporary license issued under subsection (1) or (2) of this section shall authorize the physician or registered nurse to whom the license is issued to administer treatment and care within the scope of his training to campers and employees of the youth camp, but shall not authorize the physician or registered nurse to otherwise practice in the state. Such temporary license shall be valid only during the time that the physician or registered nurse is in residence at the camp, but in no event shall such license be valid for more than ninety (90) days. A new temporary license shall be obtained by a physician or registered nurse each time that he serves as a volunteer at a youth camp. The fee for each such license shall be twenty-five dollars ($25.00), which shall be payable to the board from which the license is obtained.

SOURCES: Laws, 1981, ch. 428, § 1, eff from and after July 1, 1981.

Cross References — Temporary license for registered nurse to practice at youth camp, see § 73-15-19.

Temporary licenses for physicians to practice at youth camps, see §§ 73-25-17 and 73-25-19.

Disposition of fees and penalties collected by state board of health under this chapter, see § 75-74-19.

RESEARCH REFERENCES

ALR. Valuing damages in personal injury actions awarded for gratuitously rendered nursing and medical care. 49 A.L.R.5th 685.

§ 75-74-9. Promulgation of rules and regulations; advisory council on youth camp safety.

(1) The State Board of Health shall have the authority and the duty to make and promulgate rules and regulations consistent with the policy and purpose of this chapter, and to amend any rule or regulation it makes. In developing such rules and regulations, the board shall consult with appropriate public and private officials and organizations and parents and camp operators. It shall be the duty of the board to advise all existing youth camps in this state of this chapter and any rules and regulations promulgated under this chapter.

(2) There is created within the State Board of Health the advisory council on youth camp safety to advise and consult on policy matters relating to youth camp safety. The council consists of the health officer or his representative and a minimum of eight (8) members appointed by the State Health Officer, including the following groups: one (1) member representative each from a private nonsectarian camp, a church-related or sponsored camp, the Girl Scouts of America, the Boy Scouts of America, the Mississippi Camping Association, camps for the handicapped and civic organization camps; and a

consumer, a parent or an older youth with prior camping experience. A member is entitled to hold office for two (2) years or until his successor is appointed and qualifies. The State Health Officer or his representative shall fill vacancies for unexpired terms. Council members serve without compensation, but are entitled to be reimbursed for actual expenses incurred in the performance of their duties. The State Health Officer may appoint special advisory or technical experts and consultants as are necessary to assist the council in carrying out its functions.

(3) No rule or regulation promulgated or amended by the board under this chapter shall be effective until a public hearing is held thereon. Notice of a public hearing, including the time, date and location of the hearing and the substance of the proposed rule, regulation or amendment, shall be given by the board to each licensee of a youth camp and the general public not less than ten (10) days nor more than thirty (30) days before the hearing. Any interested person may appear at the hearing to present evidence or testimony concerning the proposed rule, regulation or amendment.

SOURCES: Laws, 1977, ch. 459, § 5; Laws, 1999, ch. 327, § 1, eff from and after July 1, 1999.

§ 75-74-11. Restrictions on operation or sponsorship of youth camps; license requirement; renewal of license [Repealed effective July 1, 2020].

No person or organization may operate or sponsor a youth camp in Mississippi without first holding a valid license under this chapter and without complying with the provisions of this chapter and with any rule, regulation or order of the State Board of Health.

Each application for a license to operate or sponsor a youth camp shall be accompanied by a license fee of One Hundred Fifty Dollars ($150.00), which shall be paid to the board. A license issued under this chapter may be renewed upon payment of a renewal fee of One Hundred Fifty Dollars ($150.00), which shall be paid to the board.

Any increase in the fees charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

SOURCES: Laws, 1977, ch. 459, § 6; Laws, 1979, ch. 445, § 12; Laws, 1986, ch. 371, § 15; Laws, 2000, ch. 365, § 2; Laws, 2008, ch. 493, § 1; Laws, 2016, ch. 510, § 64, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65 provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the next-to-last paragraph.

Cross References — Disposition of fees and penalties collected by state board of health under this chapter, see § 75-74-19.

§ 75-74-13. Repealed.

Repealed by Laws, 1999, ch. 327, § 2, eff from and after July 1, 1999. [Laws, 1977, ch. 459, § 7, eff from and after July 1, 1977]

Editor's Note — Former § 75-74-13 related to waiver of compliance with youth camp rules and regulations.

§ 75-74-15. Curriculum, program or ministry of youth camps unaffected.

Nothing in this chapter shall authorize any state agency or any official acting under this chapter to restrict, determine or influence the curriculum, program or ministry of any youth camp.

SOURCES: Laws, 1977, ch. 459, § 8, eff from and after July 1, 1977.

§ 75-74-17. Penalties.

(1) No person may operate a youth camp in Mississippi without complying with all provisions of this chapter, and any rules, regulations and orders of the State Board of Health.

(2) Any person operating a youth camp in Mississippi without a license shall be guilty of a misdemeanor. Each day shall constitute a separate offense.

SOURCES: Laws, 1977, ch. 459, § 9, eff from and after July 1, 1977.

Cross References — Disposition of fees and penalties collected by state board of health under this chapter, see § 75-74-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-74-19. Disposition of fees and penalties.

All fees collected by the State Board of Health under this chapter and any penalties collected by the board for violations of this chapter shall be deposited in a special fund hereby created in the state treasury and shall be used for the implementation and administration of this chapter when appropriated by the legislature for such purpose.

SOURCES: Laws, 1983, ch. 522, § 47, eff from and after July 1, 1983.

Cross References — Requirement that state officials pay monies collected over to state treasury, see § 7-9-21.

CHAPTER 75

Amusements, Exhibitions and Athletic Events

Article 1. Carnivals, Circuses and Fairs 75-75-1
Article 3. Athletic Events 75-75-101

Article 1.

Carnivals, Circuses and Fairs.

Sec.
75-75-1. Secretary of state as agent for service of process.
75-75-3. Service of process.
75-75-5 through 75-75-9. Repealed.
75-75-11. Venue of action.
75-75-13. Continuances.
75-75-15. Record to be kept by secretary of state.
75-75-17. Certificate of compliance; disclosure of financial responsibility, insurance coverage, and ownership.
75-75-19. Sheriff to inspect certificate of compliance; penalty and remedy for violations of law.

§ 75-75-1. Secretary of state as agent for service of process.

The entrance into this state for the purpose of doing business herein by any carnival, circus, fair, or any other like concern or organization, not permanently domiciled within the state, shall be deemed:

(a) An agreement by it that it will be subject to the jurisdiction of the courts in this state over all civil actions and proceedings against it by either a resident or nonresident plaintiff, for damages to person or property, including actions for death, growing or arising out of such use and operation; and

(b) An appointment by the person or persons or corporation operating such firm of the Secretary of State of Mississippi as his lawful attorney and agent upon whom may be served all process in suits pertaining to such actions and proceedings; and

(c) An agreement that any process in any suit so served shall be of the same legal force and validity as if personally served on the defendant of this state.

SOURCES: Codes, 1942, § 1866-01; Laws, 1952, ch. 263, § 1.

Cross References — Process in actions for damages against nonresidents, see § 13-3-57.

Municipal regulation of circuses, shows, etc., see § 21-19-33.

For the rule controlling the service of process upon persons listed in this section, see Miss. R. of Civ. P. 4.

RESEARCH REFERENCES

Am Jur. 27A Am Jur 2d Entertainment and Sports Law § 1 et seq.

1B Am. Jur. Pl & Pr Forms (Rev), Amusements and Exhibitions, Forms 41 et seq. (liability for personal injuries).

Lawyers' Edition. Governmental regulation of place of amusement, entertainment, or recreation as violating rights of owner or operator under equal protection clause of Federal Constitution's Fourteenth Amendment—Supreme Court cases. 104 L. Ed. 2d 1078.

§ 75-75-3. Service of process.

Service of process under this article shall be made pursuant to the Mississippi Rules of Civil Procedure.

SOURCES: Codes, 1942, § 1866-02; Laws, 1952, ch. 263, § 2; Laws, 1958, ch. 245, § 2; Laws, 1991, ch. 573, § 119, eff from and after July 1, 1991.

Cross References — For the rule controlling the service of process upon persons listed in this section, see Miss. R. of Civ. P. 4.

RESEARCH REFERENCES

Am Jur. 62B Am. Jur. 2d, Process § 97 et seq.

§§ 75-75-5 through 75-75-9. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991. [Codes, 1942, §§ 1866-03 to 1866-05; Laws, 1952, ch. 263, §§ 3-5]

Editor's Note — Former § 75-75-5 provided a form for the notice required in § 75-75-3.

Former § 75-75-7 defined restricted registered mail, and specified how proof of mailing was made.

Former § 75-75-9 authorized personnel service, and provided for the construction of this article.

§ 75-75-11. Venue of action.

Any suit under the provisions of this article shall be filed in the county in which the cause of action accrues.

SOURCES: Codes, 1942, § 1866-06; Laws, 1952, ch. 263, § 6.

Cross References — Venue of actions in county courts, see § 11-9-3.

§ 75-75-13. Continuances.

The court in which such action is pending shall grant such continuance to a nonresident defendant as may be proper to afford him reasonable opportunity to defend such action.

SOURCES: Codes, 1942, § 1866-07; Laws, 1952, ch. 263, § 7.

§ 75-75-15. Record to be kept by secretary of state.

It shall be the duty of the secretary of state to keep a record of all process served upon him under the provisions of this article, which record will show the day and hour of service of every such process.

The fee of two dollars and fifty cents ($2.50) paid by plaintiff to the secretary of state under the provisions of this article at the time of service of such process shall be taxed as part of plaintiff's cost if he prevails in the action or proceeding.

SOURCES: Codes, 1942, § 1866-08; Laws, 1952, ch. 263, § 8.

§ 75-75-17. Certificate of compliance; disclosure of financial responsibility, insurance coverage, and ownership.

Any carnival, circus, fair, minstrel, or other like concern or organization not permanently domiciled within the state, which shall enter the state for the purpose of doing business herein, shall, before beginning operations, make a full disclosure under oath to the secretary of state of the State of Mississippi relative to its financial responsibility, and the secretary of state after receiving same, may in his discretion require said concern to deposit with him acceptable evidence that such person, firm or corporation holds a liability or indemnity insurance policy in force and to continue in force during the period of operations in this state, and issued by an insurance company amenable to legal process in this state, conditioned to pay any final judgment against such person, firm or corporation for personal injury or property damages resulting from, growing or arising out of the operation of said concern or organization in this state. Provided that such insurance policy shall be approved by the secretary of state as to its sufficiency and as to the amount so required, the secretary of state in fixing the amount so required shall take into consideration the size of the concern or organization and the attendance and gate receipts thereof. Provided, however, that nothing in this section shall be so construed to include skating rinks that may be moved from one place to another.

Said concern shall likewise disclose under oath the type of ownership, whether sole proprietorship, partnership, corporation, the domicile of said concern, and if owned by more than one entity, the full name, domicile and type of entity.

Upon such concern complying with all of the above provisions the secretary of state shall issue said concern a certificate of compliance valid for twelve (12) months from date of issue.

SOURCES: Codes, 1942, § 1866-09; Laws, 1952, ch. 263, § 9.

RESEARCH REFERENCES

ALR. Products liability: mechanical amusement rides and devices. 77 A.L.R.4th 1152.

Lawyers' Edition. Governmental regulation of place of amusement, entertainment, or recreation as violating rights of owner or operator under equal protection clause of Federal Constitution's Fourteenth Amendment—Supreme Court cases. 104 L. Ed. 2d 1078.

§ 75-75-19. Sheriff to inspect certificate of compliance; penalty and remedy for violations of law.

It shall be the duty of the sheriff of the county to require every such concern or organization doing business in his county to submit to him for inspection a valid certificate of compliance issued by the secretary of state as provided by Section 75-75-17. It shall be unlawful for any such concern or organization to do business in any county of this state until it has submitted to the sheriff of the county for inspection its valid certificate of compliance.

Any person or persons or firm or corporation violating any of the provisions of Section 75-75-17 shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than five hundred dollars ($500.00), or imprisoned in the county jail not exceeding six (6) months, or by both such fine and imprisonment in the discretion of the court.

Whenever any person or persons or firm or corporation operates or attempts to operate in violation of Section 75-75-17, the attorney general of the state, the district attorney of the district, the county attorney, or any person who is a citizen of the county, may bring an action in equity in the name of the State of Mississippi, upon the relation of such attorney general, district attorney, or county attorney, or person to abate such operation and to enjoin any person or persons or firm or corporation operating the same from further operation thereof. Orders and injunctions, both temporary and permanent, may be issued and the same procedure shall be followed therein in the same manner as the law relating to nuisances.

SOURCES: Codes, 1942, § 1866-10; Laws, 1952, ch. 263, § 10.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Lawyers' Edition. Governmental regulation of place of amusement, entertainment, or recreation as violating rights of owner or operator under equal protection clause of Federal Constitution's Fourteenth Amendment—Supreme Court cases. 104 L. Ed. 2d 1078.

ARTICLE 3.

ATHLETIC EVENTS.

SEC.
75-75-101. Boxing and wrestling matches authorized; tough-man contest.
75-75-103. Mississippi athletic commission created.
75-75-105. Powers and duties of commission.
75-75-107. Compensation and expenses.
75-75-109. Inspectors; how elected and paid.
75-75-111. Secretary of commission.
75-75-113. License fees; how handled.
75-75-114. Payment and deposit in state treasury of funds received by Mississippi Athletic Commission.
75-75-115. Rules included in all contracts.
75-75-117. Penalty for failure to obtain license.
75-75-119. Fine for violating rules.
75-75-121. Incidental expenses.
75-75-123. Certain matches exempted.
75-75-125. Repealed.

§ 75-75-101. Boxing and wrestling matches authorized; tough-man contest.

(1) Boxing, sparring and wrestling matches and exhibitions for percentage of gate receipts where an admission fee is charged are hereby allowed. All boxing, sparring and wrestling matches and exhibitions authorized herein shall be held under the supervision of and subject to the rules and regulations of the Mississippi Athletic Commission, and in strict compliance with the provisions of this article. No boxing or sparring match or exhibition shall exceed fifteen (15) rounds of three (3) minutes each, and the charge for each seat or ticket shall be left to the discretion of the commission.

(2) For the purposes of this chapter, "tough-man contest" and kickboxing competition shall be subject to the jurisdiction of the Mississippi Athletic Commission.

SOURCES: Codes, 1930, § 3643; 1942, § 8924; Laws, 1928, ch. 54; Laws, 1979, ch. 356; reenacted and amended, Laws, 1983, ch. 483, § 1; Laws, 1986, ch. 302, § 3; reenacted, Laws, 1991, ch. 517, § 1; reenacted without change, Laws, 1995, ch. 301, § 1; Laws, 1996, ch. 413, § 1, eff from and after July 1, 1996.

Cross References — Applicability of interest rate limits to bonds issued for Mississippi Telecommunications Conference and Training Center, see § 31-31-17.

Disposition of funds received by state athletic commission, see § 75-75-114.

Criminal offense of gambling on games, etc., see § 97-33-1.

RESEARCH REFERENCES

ALR. Recovery in tort for wrongful interference with chance to win game, sporting event, or contest. 85 A.L.R.4th 1048.

Law Reviews. 1981 Mississippi Supreme Court Review; Contract, Corporate, and Commercial Law. 52 Miss. L. J. 411, June 1982.

§ 75-75-103. Mississippi athletic commission created.

There is hereby created the Mississippi Athletic Commission, hereinafter referred to as the commission. The commission shall consist of three (3) members, each of whom shall be a qualified voter and at least thirty (30) years of age. The membership of the commission shall consist of a chairman of the commission and two (2) associate commissioners, appointed by the Governor. The chairman, appointed for a term of six (6) years, and one (1) associate commissioner for four (4) years and one (1) associate commissioner for two (2) years, and hereafter their respective successors shall be appointed for a term of six (6) years. They shall take the same oath of office and may be impeached and shall be commissioned as other state officers. Any commissioner who does not attend two (2) consecutive meetings of the commission shall be subject to removal by the Governor. The chairman shall notify the Governor in writing when any member has failed to attend two (2) consecutive meetings.

SOURCES: Codes, 1930, § 3644; 1942, § 8925; Laws, 1928, ch. 54; reenacted and amended, Laws, 1983, ch. 483, § 2; reenacted, Laws, 1991, ch. 517, § 2; reenacted without change, Laws, 1995, ch. 301, § 2; Laws, 1996, ch. 413, § 2, eff from and after July 1, 1996.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

§ 75-75-105. Powers and duties of commission.

The commission shall have a seal and shall have and is hereby vested with the sole direction, management, control and jurisdiction over all boxing, sparring and wrestling matches or exhibitions to be conducted, held or given within the State of Mississippi. The commission has full power and authority and it shall be its duty: (a) to make and publish rules and regulations governing the conduct of boxing, sparring and wrestling matches and exhibitions, the time and place thereof, and the prices charged for admission thereto; (b) to accept application for and, in its discretion, order a license or permit issued to promoters and participants of these events, and to revoke the license or permit; (c) to collect through the recorder of permits and licenses a fee of six percent (6%) of the gross receipts of every boxing, sparring or wrestling match or exhibition, and a reasonable fee not to exceed One Hundred Dollars ($100.00) for each annual license or permit issued to a boxer, wrestler, referee, judge, matchmaker, promoter, manager, trainer, second, director, or timekeeper; and (d) to revoke any license or permit when, in its judgment, the public welfare requires it. The commission is prohibited from issuing regulations which may be construed as granting a franchised or exclusive territory, and from the issuing of any type of monopolistic license or permit.

SOURCES: Codes, 1930, § 3645; 1942, § 8926; Laws, 1928, ch. 54; Laws, 1973, ch. 335, § 1; reenacted, Laws, 1983, ch. 483, § 3; reenacted and amended, Laws, 1991, ch. 517, § 3; reenacted without change, Laws, 1995, ch. 301, § 3; Laws, 1996, ch. 413, § 3, eff from and after July 1, 1996.

Cross References — Disposition of funds received by state athletic commission, see § 75-75-114.

RESEARCH REFERENCES

ALR. Validity of state or local regulation dealing with resale of tickets to theatrical or sporting events. 81 A.L.R.3d 655.

Law Reviews. 1981 Mississippi Supreme Court Review: Contract, Corporate, and Commercial Law. 52 Miss. L. J. 411, June 1982.

§ 75-75-107. Compensation and expenses.

Each member of the commission shall receive per diem in accordance with Section 25-3-69 and shall be paid traveling expenses while engaged in the performance of his official duties in accordance with Section 25-3-41, including traveling expenses for attending the National Boxing Association Convention. The commissioners may pay all such national affiliation dues as may be existing against the Athletic Commission, as in their discretion, may be necessary, out of the funds collected by the recorder of permits and licenses, and on order and approval of the commission. The chairman of the commission shall be ex officio the recorder of permits and licenses and for his service as such shall receive an annual salary equal to Thirty-two Thousand Five Hundred Dollars ($32,500.00). The chairman shall not be deemed a state employee for purposes of qualifying for state-funded retirement, group insurance, or other fringe benefits.

SOURCES: Codes, 1930, § 3646; 1942, § 8927; Laws, 1928, ch. 54; Laws, 1930, ch. 21; reenacted and amended, Laws, 1983, ch. 483, § 4; reenacted, Laws, 1991, ch. 517, § 4; Laws, 1994, ch. 593, § 1; reenacted, Laws, 1995, ch. 301, § 4, eff from and after passage (approved February 28, 1995).

Cross References — Disposition of funds received by state athletic commission, see § 75-75-114.

§ 75-75-109. Inspectors; how elected and paid.

The commission may appoint and remove at pleasure, such number of inspectors of athletics as in its judgment is necessary to aid in the proper discharge of its duties. Compensation may be paid an inspector as the commission may determine, but he shall be paid, when ordered to attend a match or exhibition, his actual traveling expenses in the same way and manner as expenses of members of the commission are paid. It shall be the duty of the commission, either by one of its members or by a duly appointed inspector, to attend every boxing, wrestling or sparring match or exhibition held in the State of Mississippi. The commission may appoint and remove at pleasure, a secretary to the commission, who shall perform such duties as the commission may prescribe, and who shall keep a full, complete and up-to-date record of all proceedings of said commission, including all licenses and all sums collected, and make a report thereof to the State Auditor annually, on or before the fifteenth day of January in each year.

SOURCES: Codes, 1930, § 3647; 1942, § 8928; Laws, 1928, ch. 54; reenacted without change, Laws, 1983, ch. 483, § 5; reenacted without change, Laws, 1991, ch. 517, § 5; reenacted without change, Laws, 1995, ch. 301, § 5, eff from and after passage (approved February 28, 1995).

Editor's Note — Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 75-75-111. Secretary of commission.

The commission shall maintain a general office for the transaction of its business at a place to be designated by the chairman. It may fix the salary of its secretary, subject to the approval of the State Personnel Board, which salary shall be paid by the recorder of permits and licenses on order and approval of the commission, out of any funds on hand, for which the recorder of permits and licenses is accountable to the State of Mississippi.

SOURCES: Codes, 1930, § 3648; 1942, § 8929; Laws, 1928, ch. 54; reenacted and amended, Laws, 1983, ch. 483, § 6; reenacted, Laws, 1991, ch. 517, § 6; reenacted without change, Laws, 1995, ch. 301, § 6, eff from and after passage (approved February 28, 1995).

§ 75-75-113. License fees; how handled.

The recorder of permits and licenses shall give a bond in the sum of Five Thousand Dollars ($5,000.00) with a surety company authorized to do business in Mississippi, payable to the State of Mississippi, conditioned that he will faithfully account for and pay over to the State Treasurer all moneys collected by him, less any disbursements or deductions authorized by law, and it shall be his duty to make a report of and pay into the State Treasury on or before the fifteenth day of January and July, in each year, all moneys received after first paying all salaries, office rent, accounts and other expenditures authorized by law and approved by the commission.

SOURCES: Codes, 1930, § 3649; 1942, § 8930; Laws, 1928, ch. 54; reenacted without change, Laws, 1983, ch. 483, § 7; reenacted without change, Laws, 1991, ch. 517, § 7; reenacted without change, Laws, 1995, ch. 301, § 7, eff from and after passage (approved February 28, 1995).

Cross References — Disposition of funds received by state athletic commission, see § 75-75-114.

§ 75-75-114. Payment and deposit in state treasury of funds received by Mississippi Athletic Commission.

All funds received by the Mississippi Athletic Commission, as established by Sections 75-75-103 et seq., from any source authorized by statute shall be paid to the State Treasurer, who shall issue receipts therefor and who shall deposit such funds in the State Treasury in a special fund to the credit of said commission. All such funds shall be expended only pursuant to appropriation approved by the Legislature and as provided by law.

SOURCES: Laws, 1973, ch. 381, § 1; reenacted, Laws, 1983, ch. 483, § 8; Laws, 1984, ch. 488, § 280; reenacted, Laws, 1991, ch. 517, § 8; reenacted, Laws, 1995, ch. 301, § 8, eff from and after passage (approved February 28, 1995).

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

§ 75-75-115. Rules included in all contracts.

All contracts relating to the holding or staging of any boxing, wrestling, or sparring match or exhibition in Mississippi, or relating to any participation therein, shall contain a provision to the effect that all rules passed or adopted by the commission, either before or after the execution of the contract, shall be considered as a part of the contract, the same as if said rules were fully set out in the body of the instrument.

SOURCES: Codes, 1930, § 3650; 1942, § 8931; Laws, 1928, ch. 54; reenacted without change, Laws, 1983, ch. 483, § 9; reenacted without change, Laws, 1991, ch. 517, § 9; reenacted without change, Laws, 1995, ch. 301, § 9, eff from and after passage (approved February 28, 1995).

RESEARCH REFERENCES

ALR. Recovery in tort for wrongful interference with chance to win game, sporting event, or contest. 85 A.L.R.4th 1048.

Am Jur. 2 Am. Jur. Legal Forms 2d, Amusements and Exhibitions §§ 19:333 et seq. (contracts relating to promotion and holding of exhibitions).

§ 75-75-117. Penalty for failure to obtain license.

Any person who shall voluntarily engage in a pugilistic encounter, wrestling match or exhibition, for money or any other things of value, or for which an admission fee is charged, either directly or indirectly, or any person who shall be concerned directly or indirectly in the promotion of any boxing, wrestling, or sparring match or exhibition, or any person who acts or attempts to act as referee, judge, matchmaker, promoter, manager, trainer, director, second or timekeeper in connection with any boxing, wrestling or sparring match or exhibition in this state without first having obtained a license or permit from the commission, on conviction, shall be punished by imprisonment in the penitentiary not less than one (1) year; or by fine not less than One Hundred Dollars ($100.00) nor more than Two Thousand Dollars ($2,000.00); or by imprisonment in the county jail not less than thirty (30) days nor more than six (6) months; or by both such fine and imprisonment.

SOURCES: Codes, 1930, § 3651; 1942, § 8932; Laws, 1928, ch. 54; reenacted without change, Laws, 1983, ch. 483, § 10; reenacted without change, Laws, 1991, ch. 517, § 10; reenacted without change, Laws, 1995, ch. 301, § 10; Laws, 1996, ch. 413, § 4, eff from and after July 1, 1996.

Cross References — Disposition of funds received by state athletic commission, see § 75-75-114.

Criminal offense for practicing profession without license, see § 97-23-43.

§ 75-75-119. Fine for violating rules.

Any person who shall willfully violate any rule or regulation passed or adopted by the Mississippi Athletic Commission shall be fined by the commission as follows:

(a) For boxer or wrestler, up to Five Hundred Dollars ($500.00) or up to twenty-five percent (25%) of contracted purse;

(b) For trainer, second or manager, up to Five Hundred Dollars ($500.00) or up to ten percent (10%) of contracted amount of the represented fighter;

(c) For promoter or director, up to Five Hundred Dollars ($500.00) or up to twenty-five percent (25%) of contracted amount of the highest two (2) combined bout purses during an event; and

(d) Referee, judge, timekeeper or matchmaker, up to Five Hundred Dollars ($500.00) or twenty-five percent (25%) of the contracted pay for that event.

SOURCES: Codes, 1930, § 3652; 1942, § 8933; Laws, 1928, ch. 54; reenacted without change, Laws, 1983, ch. 483, § 11; reenacted without change, Laws, 1991, ch. 517, § 11; reenacted without change, Laws, 1995, ch. 301, § 11; Laws, 2009, ch. 550, § 1; Laws, 2010, ch. 394, § 1, eff from and after July 1, 2010.

Cross References — Disposition of funds received by state athletic commission, see § 75-75-114.

§ 75-75-121. Incidental expenses.

All licenses and permits issued by the commission shall be on forms prescribed by the commission, which shall be furnished to the commission on its order at the expense of the state. All stamps, books and other incidentals used by the commission shall be paid for on order of the commission, by the recorder of permits and licenses, out of funds on hand, for which he is accountable to the State Treasurer.

SOURCES: Codes, 1930, § 3653; 1942, § 8934; Laws, 1928, ch. 54; reenacted without change, Laws, 1983, ch. 483, § 12; reenacted without change, Laws, 1991, ch. 517, § 12; reenacted without change, Laws, 1995, ch. 301, § 12, eff from and after passage (approved February 28, 1995).

§ 75-75-123. Certain matches exempted.

Boxing, sparring and wrestling matches in colleges, universities or high schools shall be exempted from the jurisdiction of the commission herein created and shall be permitted and supervised by the governing body of such high school, college or university.

SOURCES: Codes, 1930, § 3654; 1942, § 8935; Laws, 1928, ch. 54; reenacted without change, Laws, 1983, ch. 483, § 13; reenacted without change, Laws, 1991, ch. 517, § 13; reenacted without change, Laws, 1995, ch. 301, § 13, eff from and after passage (approved February 28, 1995).

RESEARCH REFERENCES

Am Jur. 1B Am. Jur. Pl & Pr Forms (Rev), Amusements and Exhibitions, Form 31 (complaint to enjoin threatened interference by police with amateur boxing exhibition).

§ 75-75-125. Repealed.

Repealed by Laws of 1996, ch. 413, § 5, eff from and after July 1, 1996.

[Laws, 1979, ch. 301, § 20; ch. 357, § 20; Laws, 1983, ch. 483, § 14; reenacted, Laws, 1991, ch. 517, § 14; reenacted and amended, Laws, 1995, ch. 301, § 14]

Editor's Note — Former § 75-75-125 was entitled: Repeal of §§ 75-75-101 through 75-75-123.

CHAPTER 76

Mississippi Gaming Control Act

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GENERAL PROVISIONS

Sec.
75-76-1. Short title.
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75-76-5. Definitions.

§ 75-76-1. Short title.

This chapter shall be known and may be cited as the “Mississippi Gaming Control Act.”

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 1, eff from and after passage (approved June 29, 1990).

Editor’s Note — The Mississippi Gaming Control Act was enacted by Laws of 1990 Ex Sess, ch. 45, and codified predominately as a new chapter 76, in title 75. For a complete list of sections affected by Laws of 1990 Ex Sess, ch. 45, see the Statutory Tables volume.

Laws of 2005, 5th Ex Sess, ch. 16, § 8, provides:

“SECTION 8. Every entity possessing a gaming license, as defined in Section 75-76-5, that reconstructs, constructs, repairs or renovates properties affected by Hurricane Katrina is urged and encouraged to set aside at least twenty percent (20%) of such reconstruction, construction, repair or renovation contracts for expenditure with small business concerns owned and controlled by socially and economically disadvantaged individuals, and is urged and encouraged to set aside at least thirty percent (30%) of such contracts for expenditure with other Mississippi domiciled businesses. The term "socially and economically disadvantaged individuals" shall have the meaning ascribed to such term under Section 8(d) of the Small Business Act (15 USCS, Section 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this section."

Cross References — Provisions governing operation of cruise vessels, see § 27-109-1 et seq.

Inapplicability of certain provisions governing gambling and future contracts to Gaming Control Act, see § 87-1-7.

Charitable Bingo Law, see § 97-33-50 et seq.

Authorized raffles and bingo games, see §§ 97-33-51 and 97-33-52.

Bingo game or raffle held pursuant to provisions of Charitable Bingo Law not considered game or gambling game for purposes of this chapter, see § 97-33-51.

JUDICIAL DECISIONS

1. Public Trust Tidelands lease.

Despite the approval of the Mississippi Gaming Commission of a site for gaming, the Secretary of State's decision to deny the Public Trust Tidelands lease was made within the discretion granted to him; the Secretary of State had the final decision-making authority concerning the proposed Public Trust Tidelands lease, and the Secretary of State had the responsibility of preserving the Public Trust Tidelands for the people of the State of Mississippi. Columbia Land Dev., LLC v. Sec'y of State, 868 So. 2d 1006 (Miss. 2004).

ATTORNEY GENERAL OPINIONS

Any arrest made by a Mississippi Gaming Commission agent for assault, larceny, etc., is as a private citizen as it was the intent of the legislature to only give gaming enforcement agents the authority to enforce violations of the Gaming Control Act and the Charitable Bingo Law. Patton, Jan. 14, 2000, A.G. Op. #99-0708.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gambling § 1 et seq.

CJS. 38 C.J.S., Gaming § 1 et seq.

§ 75-76-3. Construction of Gaming Control Act; legislative findings and declarations.

(1) The provisions of this chapter shall not be construed to legalize any form of gaming which is prohibited under the Mississippi Constitution or the laws of this state. All legal gaming which is conducted in this state and which is otherwise authorized by law shall be regulated and licensed pursuant to the provisions of this chapter, unless the Legislature specifically provides otherwise. Nothing in this chapter shall be construed as encouraging the legalization of gambling in this state.

(2) The Legislature hereby finds and declares that lotteries and gaming both consist of the material element of chance. The Legislature is prohibited

from legislating upon lotteries and permitted by virtue of its inherent powers to legislate upon gaming as the occasion arises. The Legislature derives its power to legislate upon gaming or gambling devices from its inherent authority over the morals and policy of the people and such power shall not be considered to conflict with the constitutional prohibition of lotteries.

(3) The Legislature hereby finds, and declares it to be the public policy of this state, that:

(a) Regulation of licensed gaming is important in order that licensed gaming is conducted honestly and competitively, that the rights of the creditors of licensees are protected and that gaming is free from criminal and corruptive elements.

(b) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments and the manufacture or distribution of gambling devices and equipment.

(c) All establishments where gaming is conducted and where gambling devices are operated, and manufacturers, sellers and distributors of certain gambling devices and equipment must therefore be licensed, controlled and assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of the state.

(4) It is the intent of the Legislature that gaming licensees, to the extent practicable, employ residents of Mississippi as gaming employees and other employees in the operation of their gaming establishments located in this state.

(5) No applicant for a license or other affirmative commission approval has any right to a license or the granting of the approval sought. Any license issued or other commission approval granted pursuant to the provisions of this chapter is a revocable privilege, and no holder acquires any vested right therein or thereunder.

(6) The Legislature recognizes that Section 98 of the Mississippi Constitution of 1890 prohibits the conducting of any lottery in this state and that, while not defining the term "lottery," Section 98 clearly contemplates, as indicated by specific language contained therein, that a lottery involves the sale of tickets and a drawing in order to determine the winner. The Legislature also recognizes that Section 98 of the Mississippi Constitution of 1890 directs the Legislature to provide by law for the enforcement of its provisions. Therefore, in carrying out its duties under the Constitution and effectuating the intent of Section 98, the Legislature hereby finds that a lottery, as prohibited by the Constitution, does not include all forms of gambling but means any activity in which:

(a) The player or players pay or agree to pay something of value for chances, represented and differentiated by tickets, slips of paper or other physical and tangible documentation upon which appear numbers, symbols, characters or other distinctive marks used to identify and designate the winner or winners; and

(b) The winning chance or chances are to be determined by a drawing or similar selection method based predominately upon the element of chance or random selection rather than upon the skill or judgment of the player or players; and

(c) The holder or holders of the winning chance or chances are to receive a prize or something of valuable consideration; and

(d) The activity is conducted and participated in without regard to geographical location, with the player or players not being required to be present upon any particular premises or at any particular location in order to participate or to win.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 2, eff from and after passage (approved June 29, 1990).

JUDICIAL DECISIONS

1. In general.

Affidavit of employee of long distance carrier, stating that maximum usual retail value of long distance phone time was $.45 per minute, was irrelevant to determining whether $2 cards that entitled buyers to three minutes of long distance time through a competing carrier, plus a chance to win money prizes, constituted a lottery on basis that buyers allegedly paid consideration for chance to win prizes; affidavit had no bearing on per-minute price charged by carrier that supplied long distance time to company selling the cards. Mississippi Gaming Comm'n v. Treasured Arts, Inc., 699 So. 2d 936 (Miss. 1997).

Cards that were sold for $2, entitling buyers to three minutes of calling time with a particular long distance carrier, plus the chance to win monetary prizes from a "scratch-and-win" game, did not constitute a "lottery" so as to be prohibited under state law; seller paid long distance carrier $.66 for each minute of calling time which it purchased, thus showing that card buyers were not paying additional consideration for chance to win prizes, and fact that game portion of card could be obtained free through the mail was further evidence that consideration was not paid for chance to win prizes. Mississippi Gaming Comm'n v. Treasured Arts, Inc., 699 So. 2d 936 (Miss. 1997).

Under statute, gaming is revocable privilege, not a right, and therefore, applicant cannot be prejudiced by denial of site request. Casino Magic Corp. v. Ladner, 666 So. 2d 452 (Miss. 1995).

RESEARCH REFERENCES

ALR. Gambling in private residence as prohibited or permitted by anti-gambling laws. 27 A.L.R.3d 1074.

Validity and construction of statute exempting gambling operations carried on by religious, charitable, or other nonprofit organizations from general prohibitions against gambling. 42 A.L.R.3d 663.

Construction and application of state or municipal enactments relating to policy or numbers games. 70 A.L.R.3d 897.

Validity of statute or ordinance prohibiting or regulating bookmaking or pool selling. 80 A.L.R.4th 1079.

Construction and application of statute or ordinance prohibiting or regulating bookmaking or pool selling. 84 A.L.R.4th 740.

Am Jur. 38 Am. Jur. 2d, Gambling § 1 et seq.

12A Am. Jur. Pl & Pr Forms (Rev), Gambling, Forms 1 et seq.

§ 75-76-5. Definitions.

As used in this chapter, unless the context requires otherwise:

(a) "Applicant" means any person who has applied for or is about to apply for a state gaming license, registration or finding of suitability under the provisions of this chapter or approval of any act or transaction for which approval is required or permitted under the provisions of this chapter.

(b) "Application" means a request for the issuance of a state gaming license, registration or finding of suitability under the provisions of this chapter or for approval of any act or transaction for which approval is required or permitted under the provisions of this chapter but does not include any supplemental forms or information that may be required with the application.

(c) "Associated equipment" means any equipment or mechanical, electromechanical or electronic contrivance, component or machine used remotely or directly in connection with gaming or with any game, race book or sports pool that would not otherwise be classified as a gaming device, including dice, playing cards, links which connect to progressive slot machines, equipment which affects the proper reporting of gross revenue, computerized systems of betting at a race book or sports pool, computerized systems for monitoring slot machines, and devices for weighing or counting money.

(d) "Chairman" means the Chairman of the Mississippi Gaming Commission except when used in the term "Chairman of the State Tax Commission." "Chairman of the State Tax Commission" or "commissioner" means the Commissioner of Revenue of the Department of Revenue.

(e) "Commission" or "Mississippi Gaming Commission" means the Mississippi Gaming Commission.

(f) "Commission member" means a member of the Mississippi Gaming Commission.

(g) "Credit instrument" means a writing which evidences a gaming debt owed to a person who holds a license at the time the debt is created, and includes any writing taken in consolidation, redemption or payment of a prior credit instrument.

(h) "Enforcement division" means a particular division supervised by the executive director that provides enforcement functions.

(i) "Establishment" means any premises wherein or whereon any gaming is done.

(j) "Executive director" means the Executive Director of the Mississippi Gaming Commission.

(k) Except as otherwise provided by law, "game," or "gambling game" means any banking or percentage game played with cards, with dice or with any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value, including, without limiting, the generality of the foregoing, faro, monte, roulette, keno, fan-tan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, or any other game or device approved by the commission. However, "game" or "gambling game" shall not include bingo games or raffles which are held pursuant to the provisions of Section 97-33-51, or the illegal gambling activities described in Section 97-33-8.

The commission shall not be required to recognize any game hereunder with respect to which the commission determines it does not have sufficient experience or expertise.

(*l*) "Gaming" or "gambling" means to deal, operate, carry on, conduct, maintain or expose for play any game as defined in this chapter.

(m) "Gaming device" means any mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming or any game which affects the result of a wager by determining win or loss. The term includes a system for processing information which can alter the normal criteria of random selection, which affects the operation of any game, or which determines the outcome of a game. The term does not include a system or device which affects a game solely by stopping its operation so that the outcome remains undetermined, and does not include any antique coin machine as defined in Section 27-27-12.

(n) "Gaming employee" means any person connected directly with the operation of a gaming establishment licensed to conduct any game, including:

(i) Boxmen;
(ii) Cashiers;
(iii) Change personnel;
(iv) Counting room personnel;
(v) Dealers;
(vi) Floormen;
(vii) Hosts or other persons empowered to extend credit or complimentary services;
(viii) Keno runners;
(ix) Keno writers;
(x) Machine mechanics;
(xi) Security personnel;
(xii) Shift or pit bosses;
(xiii) Shills;
(xiv) Supervisors or managers; and
(xv) Ticket writers.

The term "gaming employee" also includes employees of manufacturers or distributors of gaming equipment within this state whose duties are directly involved with the manufacture, repair or distribution of gaming equipment.

"Gaming employee" does not include bartenders, cocktail waitresses or other persons engaged in preparing or serving food or beverages unless acting in some other capacity.

(o) "Gaming license" means any license issued by the state which authorizes the person named therein to engage in gaming.

(p) "Gross revenue" means the total of all of the following, less the total of all cash paid out as losses to patrons and those amounts paid to purchase annuities to fund losses paid to patrons over several years by independent financial institutions:

(i) Cash received as winnings;

(ii) Cash received in payment for credit extended by a licensee to a patron for purposes of gaming; and

(iii) Compensation received for conducting any game in which the licensee is not party to a wager.

For the purposes of this definition, cash or the value of noncash prizes awarded to patrons in a contest or tournament are not losses.

The term does not include:

(i) Counterfeit money or tokens;

(ii) Coins of other countries which are received in gaming devices;

(iii) Cash taken in fraudulent acts perpetrated against a licensee for which the licensee is not reimbursed; or

(iv) Cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

(q) "Hearing examiner" means a member of the Mississippi Gaming Commission or other person authorized by the commission to conduct hearings.

(r) "Investigation division" means a particular division supervised by the executive director that provides investigative functions.

(s) "License" means a gaming license or a manufacturer's, seller's or distributor's license.

(t) "Licensee" means any person to whom a valid license has been issued.

(u) "License fees" means monies required by law to be paid to obtain or continue a gaming license or a manufacturer's, seller's or distributor's license.

(v) "Licensed gaming establishment" means any premises licensed pursuant to the provisions of this chapter wherein or whereon gaming is done.

(w) "Manufacturer's," "seller's" or "distributor's" license means a license issued pursuant to Section 75-76-79.

(x) "Navigable waters" shall have the meaning ascribed to such term under Section 27-109-1.

(y) "Operation" means the conduct of gaming.

(z) "Party" means the Mississippi Gaming Commission and any licensee or other person appearing of record in any proceeding before the commission; or the Mississippi Gaming Commission and any licensee or other person appearing of record in any proceeding for judicial review of any action, decision or order of the commission.

(aa) "Person" includes any association, corporation, firm, partnership, trust or other form of business association as well as a natural person.

(bb) "Premises" means land, together with all buildings, improvements and personal property located thereon, and includes all parts of any vessel or cruise vessel.

(cc) "Race book" means the business of accepting wagers upon the outcome of any event held at a track which uses the pari-mutuel system of wagering.

(dd) "Regulation" means a rule, standard, directive or statement of general applicability which effectuates law or policy or which describes the procedure or requirements for practicing before the commission. The term includes a proposed regulation and the amendment or repeal of a prior regulation but does not include:

(i) A statement concerning only the internal management of the commission and not affecting the rights or procedures available to any licensee or other person;

(ii) A declaratory ruling;

(iii) An interagency memorandum;

(iv) The commission's decision in a contested case or relating to an application for a license; or

(v) Any notice concerning the fees to be charged which are necessary for the administration of this chapter.

(ee) "Respondent" means any licensee or other person against whom a complaint has been filed with the commission.

(ff) "Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or anything of value, whether the payoff is made automatically from the machine or in any other manner. The term does not include any antique coin machine as defined in Section 27-27-12.

(gg) "Sports pool" means the business of accepting wagers on sporting events, except for athletic events, by any system or method of wagering other than the system known as the "pari-mutuel method of wagering."

(hh) "State Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(ii) "Temporary work permit" means a work permit which is valid only for a period not to exceed ninety (90) days from its date of issue and which is not renewable.

(jj) "Vessel" or "cruise vessel" shall have the meanings ascribed to such terms under Section 27-109-1.

(kk) "Work permit" means any card, certificate or permit issued by the commission, whether denominated as a work permit, registration card or otherwise, authorizing the employment of the holder as a gaming employee. A document issued by any governmental authority for any employment other than gaming is not a valid work permit for the purposes of this chapter.

(*ll*) "School or training institution" means any school or training institution which is licensed by the commission to teach or train gaming employees pursuant to Section 75-76-34.

(mm) "Cheat" means to alter the selection of criteria that determine:

(i) The rules of a game; or

(ii) The amount or frequency of payment in a game.

(nn) "Promotional activity" means an activity or event conducted or held for the purpose of promoting or marketing the individual licensed gaming establishment that is engaging in the promotional activity. The term includes, but is not limited to, a game of any kind other than as defined in paragraph (k) of this section, a tournament, a contest, a drawing, or a promotion of any kind.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 3; Laws, 1991, ch. 543, § 2; Laws, 1992, ch. 371, § 4; Laws, 1993, ch. 488, § 1; Laws, 2009, ch. 384, § 2; Laws, 2009, ch. 492, § 141; Laws, 2013, ch. 410, § 5, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 2 of ch. 384, Laws of 2009, effective July 1, 2009, amended this section. Section 141 of ch. 492, Laws of 2009, effective July 1, 2010, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2009, meeting of the Committee.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see § 27-3-1 et seq.

Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

Regulation of schools and training institutions that teach or train gaming employees, see § 75-76-34.

Authorized raffles and bingo games, see §§ 97-33-51 and 97-33-52.

JUDICIAL DECISIONS

1. In general.
2. Game.
3. Slot machines.
4. Construction with other laws.

1. In general.

School board, which leased land to casino operator, had standing to appeal decision by Mississippi Gaming Commission to deny preliminary site approval for gaming operations; by virtue of board's participation in site approval hearings and its joining with casino operator in timely appeal, board met statutory definition of party, and $180 million that school board stood to earn from casino operator's lease on property gave it a "colorable interest" in proceedings. Mississippi Gaming Comm'n v. Board of Educ., 691 So. 2d 452 (Miss. 1997), reh'g denied, 695 So. 2d 601 (Miss. 1997).

Despite statute generally allowing appeal of final decisions of Mississippi Gaming Commission (MGC), property owner did not have statutory right to appeal site request denial of MGC that was within its statutory authority; site approval was prerequisite to license, and therefore, owner was in same position of applicant for license, who specifically was precluded from appealing MGC's denial, limiting, conditioning or restricting of a license. Casino Magic Corp. v. Ladner, 666 So. 2d 452 (Miss. 1995).

2. Game.

Gaming Commission did not have jurisdiction over a dispute involving a casino's promotional drawing because the drawing was not a "game" as defined by the Gaming Control Act, for: (1) although the number of entries for the drawing was based upon the amount of play at the casino, the drawing tickets themselves cost nothing and were given to players simply upon showing valid ID; and (2) the drawing was not played with cards, dice, or any gambling device. Ameristar Casino Vicksburg, Inc. v. Duckworth, 990 So. 2d 758 (Miss. 2008).

3. Slot machines.

Computer terminals seized from an internet cafe met the definition of slot machines under Miss. Code Ann. § 75-76-5(ff), as cafe customers would purchase telephone calling cards, swipe the cards in a terminal's card reader and play sweepstakes points in video games that stimulated slot machines; an element of chance existed as a customer who purchased a card did not know whether the card contained winning or losing sweepstake points. Moore v. Miss. Gaming Comm'n, 64 So. 3d 537 (Miss. Ct. App. 2011).

A machine was a slot machine where (1) it dispensed a two-minute emergency long distance calling card, good only for one call no matter the time actually used, (2) with each card, the purchaser also received a game piece, which had a bar code on the back that was read by the machine as the card was being dispensed, (3) the display on the machine then simulated a slot machine by spinning nine squares, (4) after a few moments, the display showed the same combination of squares as on the game piece, (5) again simulating a slot machine, the machine lit up and played music if the patron was a winner, and (6) a cashier at the store verified the winning card and then paid the prize money, which could be in the amount of one dollar up to $500. Miss. Gaming Comm'n v. Six Elec. Video Gambling Devices, 792 So. 2d 321 (Miss. Ct. App. 2001).

Where the elements of consideration and chance are present, Miss. Code Ann. § 75-76-5(ff) requires only that machines possess the "potential for reward" to be considered a slot machine subject to seizure and destruction under Miss. Code Ann. § 97-33-7(1). Miss. Gaming Comm'n v. Henson, 800 So. 2d 110 (Miss. 2001).

A machine operated at a truck stop was a slot machine where the machine operated as follows: (1) for one dollar, the machine dispensed a two-minute emergency long distance calling card, good only for one call no matter the time actually used, (2) with each card, the purchaser also received a game piece which had a bar code on the back that was read by the machine as it was dispensed, (3) the display on the machine then simulated a slot machine by spinning nine squares, (4) after a few moments, the display showed the same combination of squares as on the game piece, (5) again simulating a slot machine, the machine lit up and played music if the patron was a winner, and (6) a cashier at the store verified the winning card and then paid the prize money, which could be in the amount of one dollar up to five hundred dollars. Mississippi Gaming Comm'n v. Six Elec. Video Gambling Devices & Gene Gullick, — So. 2d —, 2001 Miss. App. LEXIS 13 (Miss. Ct. App. Jan. 9, 2001), opinion withdrawn by, substituted opinion at 792 So. 2d 321, 2001

Miss. App. LEXIS 224 (Miss. Ct. App. 2001).

4. Construction with other laws.

The definition of a "slot machine" contained in § 75-76-5(ff) is applicable to § 97-33-7, which prohibits the possession or use of slot machines. Miss. Gaming Comm'n v. Six Elec. Video Gambling Devices, 792 So. 2d 321 (Miss. Ct. App. 2001).

ATTORNEY GENERAL OPINIONS

Craps, roulette, poker, blackjack, baccarat, and other types of table games are not "gaming devices" so as to allow imposition of license tax Bardwell, August 27, 1992, A.G. Op. #92-0674.

Determination of whether marketing consultant falls within definition of "gaming employee" at Miss. Code Section 75-76-5(n) is factual determination that must be made by Mississippi Gaming Commission. McAdams, May 5, 1993, A.G. Op. #93-0327.

RESEARCH REFERENCES

ALR. Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statutes or ordinance. 1 A.L.R.3d 726.

What constitutes gambling device within meaning of 15 USCS sec. 1171(a) so as to be subject to forfeiture under Gambling Devices Act of 1962 (15 USCS secs. 1171-1178). 83 A.L.R. Fed. 177.

Am Jur. 38 Am. Jur. 2d, Gambling § 1 et seq.

CJS. 38 C.J.S., Gaming § 1.

MISSISSIPPI GAMING COMMISSION; EXECUTIVE DIRECTOR

SEC.	
75-76-7.	Mississippi Gaming Commission created; members of commission; qualifications.
75-76-9.	Appointment of members; terms; chairman; vacancies; conflicts of interest; per diem.
75-76-11.	Executive director to furnish services and equipment to commission; costs.
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75-76-21.	Power of executive director in pursuit of attainment of objectives and purposes of Gaming Control Act; costs of administration; authority to employ employees.
75-76-23.	Duties of executive director with respect to directing and supervising administrative and technical activities of commission.
75-76-25.	Attorney General to represent and advise commission and executive director.
75-76-27.	Provisions of Gaming Control Act to be administered for protection of public and in public interest; powers of executive director relative to licensing; powers of commission and executive director with respect to issuance of subpoenas and compelling testimony; power to appoint hearing examiners.

75-76-28. Powers, duties and responsibilities of commission with respect to Charitable Bingo Law.
75-76-29. Executive director to investigate applicants and licensees; authority to make recommendations concerning applicants and licensees; authority of commission with respect to licenses; licenses as revocable privilege; finality of decision of commission.
75-76-31. Right of commission and executive director to refuse to reveal identity of informants and information obtained.
75-76-33. Authority of commission to adopt, amend or repeal regulations; particular regulations specified; regulations licensees required to comply with; funding of agency expenses; deposit of monies into State General Fund.
75-76-34. Regulation of schools and training institutions that teach or train gaming employees; allow gaming management courses to be taught at institutions of higher learning and community colleges.

§ 75-76-7. Mississippi Gaming Commission created; members of commission; qualifications.

(1) [Repealed]

(2) From and after October 1, 1993, the Mississippi Gaming Commission, consisting of three (3) members, is hereby created.

(3)(a) Each member of the commission shall be:

(i) A citizen of the United States; and

(ii) A resident of the State of Mississippi.

(b) One (1) member of the commission shall have been a resident for not less than five (5) years of a county in which gaming is authorized at the time of appointment.

(4) No member of the Legislature, no person holding any elective office, nor any officer or official of any political party shall be eligible to appointment to the commission.

(5) It is the intention of the Legislature that the commission shall be composed of the most qualified persons available, preferably no two (2) of whom shall be of the same profession or major field of industry; but no person actively engaged or having a direct pecuniary interest in gaming activities shall be a member of the commission.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 4, eff from and after passage (approved June 29, 1990).

Editor's Note — Subsection (1) was repealed by its own terms, effective October 1, 1993.

Cross References — Duties of Commission with respect to Charitable Bingo Law, see § 75-76-28.

Additional duties of Commission with respect to Charitable Bingo Law, see § 97-33-50 et seq.

Functions, duties and responsibilities of Commission with respect to regulation of charitable bingo games, see § 97-33-107.

§ 75-76-9. Appointment of members; terms; chairman; vacancies; conflicts of interest; per diem.

(1) This section shall take effect from and after October 1, 1993.

(2) Initial appointments to the commission made pursuant to this chapter shall be for terms as follows:

(a) One (1) member for two (2) years;
(b) One (1) member for three (3) years; and
(c) One (1) member for four (4) years.

(3) The term of each of the members first appointed pursuant to this chapter shall be designated by the Governor.

(4) After the initial appointments, all members shall be appointed for terms of four (4) years from the expiration date of the previous term; provided, however, that no member shall serve more than two (2) terms of four (4) years each.

(5) Appointments to the commission and designation of the chairman shall be made by the Governor with the advice and consent of the Senate. Prior to the nomination, the PEER Committee shall conduct an inquiry into the nominee's background, with particular regard to the nominee's financial stability, integrity and responsibility and his reputation for good character, honesty and integrity.

(6) The member designated by the Governor to serve as chairman shall serve in such capacity throughout such member's entire term and until his successor shall have been duly appointed and qualified. No such member, however, shall serve in such capacity for more than ten (10) years.

(7) Appointments to fill vacancies on the commission shall be for the unexpired term of the member to be replaced.

(8) Members of the commission shall not have any direct or indirect interest in an undertaking that puts their personal interest in conflict with that of the commission and shall be governed by the provisions of Section 109 of the Mississippi Constitution and Section 25-4-105. In addition, members of the commission shall not receive anything of value from, or on behalf of, any person holding or applying for a gaming license under this chapter.

(9) Each member of the commission shall serve for the duration of his term and until his successor shall be duly appointed and qualified; provided, however, that in the event that a successor is not duly appointed and qualified within one hundred twenty (120) days after the expiration of the member's term, a vacancy shall be deemed to exist.

(10) Each member of the commission is entitled to per diem as provided by Section 25-3-69.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 5; Laws, 2010, ch. 431, § 5, eff from and after passage (approved Mar. 24, 2010.)

Cross References — Elected or appointed officials not to derive any benefit as a result of their duties under the Gaming Control Act, and penalties therefor, see § 75-76-281.

ATTORNEY GENERAL OPINIONS

Statute does not explicitly state that Gaming Commissioner or company owned by him may not contract with casino licensee or with contractor of casino licensee, although there would be question of whether Commissioner derived pecuniary benefit by virtue of his position. Irby, Feb. 10, 1994, A.G. Op. #93-0922.

§ 75-76-11. Executive director to furnish services and equipment to commission; costs.

(1) This section shall take effect from and after October 1, 1993.

(2) The executive director and his employees shall furnish to the commission such administrative and clerical services and such furnishings, equipment, supplies, stationery, books and all other things that the commission may deem necessary or desirable in carrying out its functions.

(3) All costs of administration incurred by the executive director on behalf of the commission shall be paid out on claims from the State Treasury.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 6, eff from and after passage (approved June 29, 1990).

§ 75-76-13. Meetings of commission; quorum requirements.

(1) This section shall take effect from and after October 1, 1993.

(2) Regular and special meetings of the commission may be held, at the discretion of the commission, at such times and places as it may deem convenient, but at least one (1) regular meeting shall be held each month on or after the fifteenth day of the month. All meetings shall be open unless they may be closed pursuant to Section 25-41-7.

(3) A majority of the members is a quorum of the commission.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 7, eff from and after passage (approved June 29, 1990).

§ 75-76-15. Gaming Commission to appoint executive director; eligibility; qualifications; salary.

(1) [Repealed]

(2) From and after October 1, 1993, the position of Executive Director of the Mississippi Gaming Commission is hereby created.

(3) The Gaming Commission shall appoint the executive director, with the advice and consent of the Senate, and the executive director shall serve at the will and pleasure of the commission. The director appointed by the State Tax Commission pursuant to subsection (1) of this section who is serving on September 30, 1993, shall serve as the Executive Director of the Mississippi Gaming Commission until the executive director appointed by the Gaming Commission pursuant to this section is confirmed by the Senate.

(4) No member of the Legislature, no person holding any elective office, nor any officer or official of any political party is eligible for the appointment of executive director.

(5) The executive director must have at least five (5) years of responsible administrative experience in public or business administration or possess broad management skills.

(6) The executive director shall devote his entire time and attention to his duties under this chapter and the business of the commission and shall not pursue any other business or occupation or hold any other office of profit.

(7) The executive director shall not be pecuniarily interested in any business or organization holding a gaming license under this chapter or doing business with any person or organization licensed under this chapter and shall be governed by the provisions of Section 25-4-105. In addition, the executive director shall not receive anything of value from, or on behalf of, any person holding or applying for a gaming license under this chapter.

(8) The executive director is entitled to an annual salary in the amount specified by the commission, subject to the approval of the State Personnel Board, within the limits of legislative appropriations or authorizations.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 8; Laws, 2010, ch. 431, § 6, eff from and after passage (approved Mar. 24, 2010.)

Editor's Note — Subsection (1) was repealed by its own terms, effective October 1, 1993.

§ 75-76-17. Enforcement Division and Investigation Division created; authority of executive director to create additional divisions; division directors.

(1) From and after October 1, 1993, there are hereby created, for supervision by the executive director, two (2) divisions which are entitled the Enforcement Division and the Investigation Division. The executive director shall be authorized to create such other divisions as he deems necessary to implement the provisions of this chapter excluding an audit division.

(2) The executive director shall employ division directors that possess training and experience in the fields of investigation, law enforcement, law or gaming.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 9, eff from and after passage (approved June 29, 1990).

§ 75-76-19. Files and records to be maintained by executive director; confidentiality of information; commission to report to legislature.

(1) The executive director shall maintain a file of all applications for licenses under this chapter, together with a record of all action taken with respect to those applications. The file and record are open to public inspection.

(2) The commission and the executive director may maintain such other files and records as they deem desirable.

(3) All information and data:

(a) Required by the commission or the executive director to be furnished to them under this chapter or which may be otherwise obtained relative to the finances, earnings or revenue of any applicant or licensee;

(b) Pertaining to an applicant's criminal record, antecedents and background which have been furnished to or obtained by the commission or the executive director from any source;

(c) Provided to the members of the commission or the executive director or his employees by a governmental agency or an informer or on the assurance that the information will be held in confidence and treated as confidential; and

(d) Obtained by the executive director or the commission from a manufacturer, distributor or operator relating to the manufacturing of gaming devices; are confidential and may be revealed in whole or in part only in the course of the necessary administration of this chapter or upon the lawful order of a court of competent jurisdiction, except that the executive director or the commission may reveal such information and data to an authorized agent of any agency of the United States Government, any state, or any political subdivision of this state pursuant to regulations adopted by the commission. Notice of the content of any information or data furnished or released pursuant to this subsection (3) may be given to any applicant or licensee in a manner prescribed by regulations adopted by the commission.

(4) Before the beginning of each legislative session, the commission shall submit to the Legislature a report on the gross revenue, net revenue and average depreciation of all licensees, categorized by class of licensee and geographical area, and the assessed valuation of the property of all licensees, by category, as listed on the ad valorem tax assessment rolls.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 10, eff from and after passage (approved June 29, 1990).

§ 75-76-21. Power of executive director in pursuit of attainment of objectives and purposes of Gaming Control Act; costs of administration; authority to employ employees.

(1) The executive director in pursuit of the attainment of the objectives and the purposes of this chapter may:

(a) Sue and be sued on behalf of the commission;

(b) Acquire real property in accordance with statutory procedure and make improvements thereon on behalf of the commission;

(c) Make, execute and effectuate any and all agreements or contracts, including contracts for the purchase of goods and services as are necessary;

(d) Employ the services of such persons as he considers necessary for the purposes of consultation or investigation and fix the salaries of or contract for the services of such legal, professional, technical and operational personnel and consultants, subject to applicable provisions of the State Personnel Board. For the purpose of implementing the provisions of this chapter, additional legal assistance may be retained only with the approval of the Attorney General;

(e) Acquire such furnishings, equipment, supplies, stationery, books, and all other things as he may deem necessary or desirable in carrying out his functions; and

(f) Perform such other duties which he may deem necessary to effectuate the purposes of this chapter.

(2) Except as otherwise provided in this chapter, all costs of administration incurred by the executive director and his employees shall be paid out on claims from the State Treasury in the same manner as other claims against the state are paid.

(3) [Repealed]

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 11, eff from and after passage (approved June 29, 1990).

Editor's Note — Subsection (3) was repealed by its own terms, effective October 1, 1993.

§ 75-76-23. Duties of executive director with respect to directing and supervising administrative and technical activities of commission.

The executive director shall direct and supervise all administrative and technical activities of the commission in accordance with the provisions of this chapter and with the administrative procedures of and regulations adopted by the commission. It shall be the duty of the executive director to:

(a) Establish, and from time to time alter, such plan of organization as he may deem expedient;

(b) By agreement secure information and services as he deems necessary from any department, agency or unit of state government. Such agencies, departments or units of state government shall cooperate with the executive director and provide such information and services as may be required by the executive director to carry out his responsibilities;

(c) Make available for inspection by any member of the commission, upon request, all books, records, files and other information and documents of his office, and advise the commission and recommend such administrative regulations and other matters he deems necessary and advisable to improve the administration of this chapter; and

(d) Attend meetings of the commission or appoint a designee to attend on his behalf.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 12, eff from and after passage (approved June 29, 1990).

§ 75-76-25. Attorney General to represent and advise commission and executive director.

Except as otherwise authorized in Section 7-5-39, the Attorney General and his assistants shall represent the commission and the executive director in any proceeding to which the commission or the executive director is a party under this chapter and shall also advise the commission and the executive director in all other matters, including representing the commission when the commission sits in a quasi-judicial capacity.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 13; Laws, 2012, ch. 546, § 41, eff from and after July 1, 2012.

§ 75-76-27. Provisions of Gaming Control Act to be administered for protection of public and in public interest; powers of executive director relative to licensing; powers of commission and executive director with respect to issuance of subpoenas and compelling testimony; power to appoint hearing examiners.

(1) The provisions of this chapter with respect to state gaming licenses and manufacturer's, seller's and distributor's licenses shall be administered by the executive director for the protection of the public and in the public interest in accordance with the policy of this state.

(2) The executive director and his employees may:

(a) Inspect and examine all premises wherein gaming is conducted or gambling devices or equipment are manufactured, sold or distributed;

(b) Inspect all equipment and supplies in, upon or about such premises;

(c) Summarily seize and remove from such premises and impound any equipment or supplies for the purpose of examination and inspection;

(d) Demand access to and inspect, examine, photocopy and audit all papers, books and records of applicants and licensees, on their premises or elsewhere as practicable, in the presence of the licensee or his agent, respecting the gross income produced by any gaming business (and may require verification of income) and respecting all other matters affecting the enforcement of the policy or any of the provisions of this chapter.

(3) For the purpose of conducting audits after the cessation of gaming by a licensee, the former licensee shall furnish, upon demand of the executive director or his employee, books, papers and records as necessary to conduct the audits. The former licensee shall maintain all books, papers and records necessary for audits for a period of three (3) years after the date of the surrender or revocation of his gaming license. If the former licensee seeks judicial review of a deficiency determination or files a petition for a redetermination, he must maintain all books, papers and records until a final order is entered on the determination.

(4) The executive director may investigate, for the purpose of prosecution, any suspected criminal violation of the provisions of this chapter. For the

purpose of the administration and enforcement of this chapter, the executive director and enforcement employees have the powers of a peace officer of this state.

(5) The commission or executive director has full power and authority to issue subpoenas and compel the attendance of witnesses at any place within this state, to administer oaths, and to require testimony under oath. Any process or notice may be served in the manner provided for service of process and notices in civil actions. The commission or the executive director may pay such transportation and other expenses of witnesses as they deem reasonable and proper. Any person making false oath in any matter before the commission is guilty of perjury. The commission may appoint hearing examiners who may administer oaths and receive evidence and testimony under oath.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 14, eff from and after passage (approved June 29, 1990).

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gambling § 8 et seq.

§ 75-76-28. Powers, duties and responsibilities of commission with respect to Charitable Bingo Law.

The commission has full power and authority to exercise any of the powers, duties and responsibilities set forth in Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203.

SOURCES: Laws, 1992, ch. 581, § 25, eff from and after October 1, 1992.

Cross References — Additional duties of Commission with respect to Charitable Bingo Law, see § 97-33-50 et seq.

Functions, duties and responsibilities of commission with respect to regulation of charitable bingo games, see § 97-33-107.

§ 75-76-29. Executive director to investigate applicants and licensees; authority to make recommendations concerning applicants and licensees; authority of commission with respect to licenses; licenses as revocable privilege; finality of decision of commission.

(1) The executive director and his employees shall investigate the qualifications of each applicant under this chapter before any license is issued or before any registration, finding of suitability or approval of acts or transactions for which commission approval is required is granted, and the executive director shall continue to observe the conduct of all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation or registered holding company to ensure that licenses are not issued or held by, nor is there any material involvement directly or indirectly with a

licensed gaming operation or registered holding company by, unqualified, disqualified or unsuitable persons or persons whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places or locations.

(2) The executive director has the authority to recommend to the commission the denial of any application, the limitation, conditioning or restriction of any license, registration, finding of suitability or approval or the imposition of a fine upon any person licensed, registered or found suitable or approved for any cause deemed reasonable by the executive director.

(3) The commission has full and absolute power and authority to deny any application or limit, condition, restrict, revoke or suspend any license, registration, finding of suitability or approval, or fine any person licensed, registered, found suitable or approved, for any cause deemed reasonable by the commission.

(4) Any license issued or other commission approval granted pursuant to the provisions of this chapter is a revocable privilege, and no holder acquires any vested right therein or thereunder. The initial decision of the commission to deny, limit, condition or restrict a license shall be final.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 15, eff from and after passage (approved June 29, 1990).

JUDICIAL DECISIONS

1. In general.

Mississippi Gaming Commission was authorized to make decisions concerning site suitability and did not exceed its statutory authority where substantial evidence supported the commission's finding that a certain site was unsuitable for gaming. Miss. Gaming Comm'n v. Pennebaker, 824 So. 2d 552 (Miss. 2002).

Despite statute generally allowing appeal of final decisions of Mississippi Gaming Commission (MGC), property owner did not have statutory right to appeal site request denial of MGC that was within its statutory authority; site approval was prerequisite to license, and therefore, owner was in same position of applicant for license, who specifically was precluded from appealing MGC's denial, limiting, conditioning or restricting of a license. Casino Magic Corp. v. Ladner, 666 So. 2d 452 (Miss. 1995).

Supreme Court has judicial review of any action by the Mississippi Gaming Commission that exceeds its statutory authority. Casino Magic Corp. v. Ladner, 666 So. 2d 452 (Miss. 1995).

ATTORNEY GENERAL OPINIONS

Ultimate determination regarding suitability of particular location for casino rests in hands of Mississippi Gaming Commission. Rishel, Dec. 18, 1992, A.G. Op. #92-00915.

Under this section, the gaming commission, if it so desires, does have the power and authority to revoke or suspend an entities' gaming license for failure to pay ad valorem taxes. Chaney, October 26, 1995, A.G. Op. #95-0335.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gambling § 8 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 75-76-31. Right of commission and executive director to refuse to reveal identity of informants and information obtained.

The commission and the executive director may refuse to reveal, in any court or administrative proceeding except a proceeding brought by the State of Mississippi, the identity of an informant or the information obtained from the informant, or both the identity and the information.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 16, eff from and after passage (approved June 29, 1990).

§ 75-76-33. Authority of commission to adopt, amend or repeal regulations; particular regulations specified; regulations licensees required to comply with; funding of agency expenses; deposit of monies into State General Fund.

(1) The commission shall, from time to time, adopt, amend or repeal such regulations, consistent with the policy, objects and purposes of this chapter, as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this chapter. The commission shall comply with the Mississippi Administrative Procedures Law when adopting, amending or repealing any regulations authorized under this section or under any other provision of this chapter.

(2) These regulations shall, without limiting the general powers herein conferred, include the following:

(a) Prescribing the method and form of application which any applicant for a license or for a manufacturer's, seller's or distributor's license must follow and complete before consideration of his application by the executive director or the commission.

(b) Prescribing the information to be furnished by any applicant or licensee concerning his antecedents, habits, character, associates, criminal record, business activities and financial affairs, past or present.

(c) Prescribing the information to be furnished by a licensee relating to his employees.

(d) Requiring fingerprinting of an applicant or licensee, and gaming employees of a licensee, or other methods of identification and the forwarding of all fingerprints taken pursuant to regulation of the Federal Bureau of Investigation.

(e) Prescribing the manner and procedure of all hearings conducted by the commission or any hearing examiner of the commission, including special rules of evidence applicable thereto and notices thereof.

(f) Requiring any applicant to pay all or any part of the fees and costs of investigation of such applicant as may be determined by the commission under paragraph (g) of this subsection (2).

(g) Prescribing the amounts of investigative fees only as authorized by regulations of the commission under paragraph (f) of this subsection, and collecting those fees. The commission shall adopt regulations setting the amounts of those fees at levels that will provide the commission with sufficient revenue, when combined with any other monies as may be deposited into the Mississippi Gaming Commission Fund created in Section 75-76-325, to carry out the provisions of this chapter without any state general funds. In calculating the amount of such fees, the commission shall:

(i) Attempt to set the fees at levels that will create a balance in the Mississippi Gaming Commission Fund that does not exceed, at the end of any state fiscal year, two percent (2%) of the projected amount of funds that will provide the commission with such sufficient revenue; and

(ii) Demonstrate the reasonableness of the relationship between a fee and the actual costs of the investigative activity for which the fee is being prescribed.

(h) Prescribing the manner and method of collection and payment of fees and issuance of licenses.

(i) Prescribing under what conditions a licensee may be deemed subject to revocation or suspension of his license.

(j) Requiring any applicant or licensee to waive any privilege with respect to any testimony at any hearing or meeting of the commission, except any privilege afforded by the Constitution of the United States or this state.

(k) Defining and limiting the area, games and devices permitted, and the method of operation of such games and devices, for the purposes of this chapter.

(*l*) Prescribing under what conditions the nonpayment of a gambling debt by a licensee shall be deemed grounds for revocation or suspension of his license.

(m) Governing the use and approval of gambling devices and equipment.

(n) Prescribing the qualifications of, and the conditions under which, attorneys, accountants and others are permitted to practice before the commission.

(o) Restricting access to confidential information obtained under this chapter and ensuring that the confidentiality of such information is maintained and protected.

(p) Prescribing the manner and procedure by which the executive director on behalf of the commission shall notify a county or a municipality wherein an applicant for a license desires to locate.

(q) Prescribing the manner and procedure for an objection to be filed with the commission and the executive director by a county or municipality wherein an applicant for a license desires to locate.

(3) Notwithstanding any other provision of law, each licensee shall be required to comply with the following regulations:

(a) No wagering shall be allowed on the outcome of any athletic event, nor on any matter to be determined during an athletic event, nor on the outcome of any event, which does not take place on the premises.

(b) No wager may be placed by, or on behalf of, any individual or entity or group, not present on a licensed vessel or cruise vessel.

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 17; Laws, 2010, ch. 431, § 1; Laws, 2016, ch. 459, § 5, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes — The 2016 amendment added (4) and (5).

Cross References — Mississippi Administrative Procedures Law, see § 25-43-1.101 et seq.

Prohibition against one state agency charging another state agencies fees, etc., for services or resources received, see § 27-104-35.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-37.

JUDICIAL DECISIONS

1. In general.

The Mississippi Gaming Control Act of 1990, §§ 75-76-1 to 75-76-281, does not legalize the operation of race book in licensed casinos. Mississippi Gaming Comm'n v. Imperial Palace of Miss., Inc., 751 So. 2d 1025 (Miss. 1999).

ATTORNEY GENERAL OPINIONS

Gaming Commission has authority to compel casinos to conform their activities to municipal ordinance limiting hours of operation. Rafferty, August 27, 1992, A.G. Op. #92-0161.

§ 75-76-34. Regulation of schools and training institutions that teach or train gaming employees; allow gaming management courses to be taught at institutions of higher learning and community colleges.

(1) Except as otherwise provided in this section, the Mississippi Gaming Commission is authorized to regulate all schools or training institutions that teach or train gaming employees. No such school shall be located on publicly owned property, other than property under the jurisdiction of the Board of Trustees of State Institutions of Higher Learning or a public community college. Except as authorized under this section, no public school shall teach or train persons to be gaming employees. The gaming educational activities of schools or training institutions regulated by the commission and of state institutions of higher learning and public community colleges shall be deemed to be legal under the laws of the State of Mississippi. Any person desiring to operate a school or training institution other than a state institution of higher learning or public community college must file a license application with the executive director to be licensed by the commission.

(2) The commission may adopt regulations it deems necessary to regulate schools and training institutions other than state institutions of higher learning and public community colleges. These regulations shall, without limiting the general powers of the commission, include the following:

(a) Prescribing the method and form of application which any applicant for a school or training institution must follow and complete before consideration of his application by the executive director or commission.

(b) Prescribing the information to be furnished by the applicant relating to his employees.

(c) Requiring fingerprinting of the applicant, employees and students of the school or institution or other methods of identification and the forwarding of all fingerprints taken pursuant to regulation of the Federal Bureau of Investigation.

(d) Requiring any applicant to pay all or part of the fees and costs of investigation of the applicant as may be determined by the commission.

(e) Prescribing the manner and method of collection and payment of fees and costs and issuance of licenses to schools or training institutions.

(f) Prescribing under what conditions a licensee authorized by this section may be deemed subject to revocation or suspension of his license.

(g) Defining the curriculum of the school or training institution, the games and devices permitted, the use of tokens only for instruction purposes, and the method of operation of games and devices.

(h) Requiring the applicant to submit its location of the school or training institution, which shall be at least four hundred (400) feet from any church, school, kindergarten or funeral home. However, within an area zoned commercial or business, the minimum distance shall not be less than one hundred (100) feet.

(i) Requiring that all employees and students of the school or training institution be at least twenty-one (21) years of age.

(j) Requiring all employees and students of the school or training institution to wear identification cards issued by the commission while on the premises of the school or training institution.

(k) Requiring the commission to investigate each applicant, employee and student and determine that the individual does not fall within any one (1) of the following categories:

(i) Is under indictment for, or has been convicted in any court of, a felony;

(ii) Is a fugitive from justice;

(iii) Is an unlawful user of any controlled substance, is addicted to any controlled substance or alcoholic beverage, or is an habitual drunkard;

(iv) Is a mental defective, has been committed to a mental institution, or has been voluntarily committed to a mental institution on more than one (1) occasion;

(v) Has been discharged from the Armed Forces under dishonorable conditions; or

(vi) Has been found at any time by the executive director or commission to have falsified any information.

(3) State institutions of higher learning and community colleges may offer credited courses specifically relating to gaming management, including, but not limited to, courses that provide instruction in accounting, hospitality, marketing, auditing, finance, procurement, security and regulatory requirements in fulfillment of a degree in general business management, hotel and motel management, food and beverage management, gaming management, accounting or criminal justice. State institutions of higher learning and community colleges are not subject to regulation by the commission for the purposes of this subsection. The courses authorized by this subsection may be offered only in those counties where gaming is legally being conducted and where the institution is located.

(4) State institutions of higher learning and public community colleges may offer courses related to casino hospitality services, cage and count operations, and slot machine maintenance. Slot machine maintenance training may be performed only on equipment approved by the commission for training purposes only. State institutions of higher learning and public community colleges are not subject to regulation by the commission for the purposes of this subsection. The courses authorized by this subsection may be offered only in those counties where gaming is legally being conducted and where the institution or community college is located.

SOURCES: Laws, 1991, ch. 543, § 1; Laws, 2010, ch. 431, § 8; Laws, 2013, ch. 327, § 1, eff from and after July 1, 2013.

ATTORNEY GENERAL OPINIONS

The prohibitions contained in this section are applicable to the state institutions of higher learning. These statutory prohibitions remain valid until such time as a court of competent jurisdiction declares the prohibitions to be unconstitutional or until the Legislature repeals or amends the act to remove such prohibitions. Nunnelee, May 12, 2004, A.G. Op. #04-0203.

EXCLUSION OR EJECTION OF PERSONS FROM GAMING ESTABLISHMENTS

SEC.	
75-76-35.	Exclusion or ejection of certain persons from gaming establishments.
75-76-37.	Notice to persons excluded or ejected; notice to all gaming licensees.
75-76-39.	Hearing on exclusion or ejection.
75-76-41.	Penalties for failure to exclude or eject persons required to be excluded or ejected.
75-76-43.	Penalty for person excluded or ejected who enters licensed gaming establishment.

§ 75-76-35. Exclusion or ejection of certain persons from gaming establishments.

(1) The Legislature hereby declares that the exclusion or ejection of certain persons from licensed gaming establishments is necessary to effectuate the policies of this chapter and to maintain effectively the strict regulation of licensed gaming.

(2) The commission may by regulation provide for the establishment of a list of persons who are to be excluded or ejected from any licensed gaming establishment. The list may include any person whose presence in the establishment is determined by the commission or the executive director to pose a threat to the interests of this state or to licensed gaming, or both.

(3) In making that determination, the commission and the executive director may consider any:

(a) Prior conviction of a crime which is a felony in this state or under the laws of the United States, a crime involving moral turpitude, or a violation of the gaming laws of any state;

(b) Violation or conspiracy to violate the provisions of this chapter relating to:

(i) The failure to disclose an interest in a gaming establishment for which the person must obtain a license; or

(ii) Willful evasion of fees or taxes;

(c) Notorious or unsavory reputation which would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive elements; or

(d) Written order of a governmental agency which authorizes the exclusion or ejection of the person from an establishment at which gaming is conducted.

(4) Race, color, creed, national origin or ancestry, or sex shall not be grounds for placing the name of a person upon the list.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 18, eff from and after passage (approved June 29, 1990).

§ 75-76-37. Notice to persons excluded or ejected; notice to all gaming licensees.

(1) Whenever the name and description of any person is placed on a list, the commission shall serve notice of such fact to such person:

(a) By personal service; or

(b) By certified mail to the last known address of such person; or

(c) By publication daily for one (1) week in one of the principal newspapers published in the county where such person resides or Jackson, Mississippi, if notice cannot be served in person or by mail.

(2) Whenever the name and description of any person is placed on a list, the commission may notify all gaming licensees of such fact.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 19, eff from and after passage (approved June 29, 1990).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 75-76-39. Hearing on exclusion or ejection.

(1) Within thirty (30) days after service by mail or in person or sixty (60) days after the last publication, the person named may demand a hearing before the commission and show cause why he should have his name taken from such a list. Failure to demand a hearing within the time allotted in this section precludes the person from having an administrative hearing but in no way affects his right to petition for judicial review as provided in paragraph (b) of subsection (3) of this section.

(2) Upon receipt of a demand for hearing, the commission shall set a time and place for the hearing. This hearing must not be held later than thirty (30) days after receipt of the demand for the hearing, unless the time of the hearing is changed by agreement of the commission and the person demanding the hearing.

(3) If, upon completion of the hearing, the commission determines that:

(a) The regulation does not or should not apply to the person so listed, the commission shall notify all persons licensed of its determination.

(b) Placing the person on the exclusion or ejection list was proper, the commission shall make and enter in its minutes an order to that effect. This order is subject to review by any court of competent jurisdiction.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 20, eff from and after passage (approved June 29, 1990).

§ 75-76-41. Penalties for failure to exclude or eject persons required to be excluded or ejected.

The commission may revoke, limit, condition, suspend or fine an individual licensee or licensed gaming establishment in accordance with the laws of this state and the regulations of the commission if that establishment or any individual licensee affiliated therewith knowingly fails to exclude or eject from the premises of the licensed establishment any person placed on the list of persons to be excluded or ejected.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 21, eff from and after passage (approved June 29, 1990).

§ 75-76-43. Penalty for person excluded or ejected who enters licensed gaming establishment.

Any person who has been placed on the list of persons to be excluded or ejected from any licensed gaming establishment is guilty of a misdemeanor if he thereafter enters the premises of a licensed gaming establishment without first having obtained a determination by the commission that he should not have been placed on the list of persons to be excluded or ejected.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 22, eff from and after passage (approved June 29, 1990).

FINANCIAL AFFAIRS OF LICENSEES

SEC.	
75-76-45.	Minimum procedures for licensees to adopt to exercise control over internal fiscal affairs of licensees.
75-76-47.	Financial reports required from licensees.
75-76-49.	Audits of financial statements of licensees; costs of audits.
75-76-51.	Commission to adopt regulations prescribing manner of computing and reporting winnings, compensation and gross revenues.

§ 75-76-45. Minimum procedures for licensees to adopt to exercise control over internal fiscal affairs of licensees.

The commission shall prescribe minimum procedures for adoption by each licensee to exercise effective control over the internal fiscal affairs of the licensee, which shall include but are not limited to provisions for:

(a) The safeguarding of assets and revenues, especially the recording of cash and evidences of indebtedness; and

(b) The provision of reliable records, accounts and reports of transactions, operations and events, including reports to the commission and the executive director.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 23, eff from and after passage (approved June 29, 1990).

§ 75-76-47. Financial reports required from licensees.

The commission shall by regulation require periodic financial reports from each licensee, and:

(a) Specify standard forms for reporting financial condition, results of operations and other relevant financial information.

(b) Formulate a uniform code of accounts and accounting classifications to assure consistency, comparability and effective disclosure of financial information.

(c) Prescribe the intervals at which such information shall be furnished. For this purpose the commission may classify licensees by size of operation.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 24, eff from and after passage (approved June 29, 1990).

§ 75-76-49. Audits of financial statements of licensees; costs of audits.

(1) The commission shall by regulation require audits of the financial statements of all licensees whose annual gross revenue is Three Million Dollars ($3,000,000.00) or more.

(2) The commission may require audits, compiled statements or reviews of the financial statements of licensees whose annual gross revenue is less than Three Million Dollars ($3,000,000.00).

(3) The audits, compilations and reviews provided for in subsections (1) and (2) must be made by independent accountants holding permits to practice public accounting in the State of Mississippi.

(4) Except as provided in subsection (5), for every audit required pursuant to this section:

(a) The independent accountants shall submit an audit report which must express an unqualified or qualified opinion or, if appropriate, disclaim an opinion on the statements taken as a whole in accordance with standards for the accounting profession established by rules and regulations of the Mississippi State Board of Public Accountancy, but the preparation of statement without audit does not constitute compliance.

(b) The examination and audit must disclose whether the accounts, records and control procedures maintained by the licensee are as required by the regulations promulgated by the commission.

(5) If the license of a licensee is terminated within three (3) months after the end of a period covered by an audit, the licensee may submit compiled statements in lieu of an additional audited statement for the licensee's final period of business.

(6) The licensee shall be responsible for the payment of costs or fees generated by any audit required by the commission. Failure to pay such costs and fees for such audit may result in the revocation of his license.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 25, eff from and after passage (approved June 29, 1990).

§ 75-76-51. Commission to adopt regulations prescribing manner of computing and reporting winnings, compensation and gross revenues.

The commission shall adopt regulations which prescribe the manner in which winnings, compensation from games and gaming devices, and gross revenue must be computed and reported by the licensee.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 26, eff from and after passage (approved June 29, 1990).

REGULATION OF LICENSEES

Sec.
75-76-53. Powers of commission relative to sale of securities of licensees.
75-76-55. Acts prohibited of owners, licensees or employees without first obtaining gaming license.
75-76-57. Prohibited acts; exceptions; exemption of holding company from licensing requirements; information required for exceptions; persons subject to suitability finding and licensing requirements; licensees prohibited from contracting with persons found unsuitable.
75-76-59. Declaration of exemption from federal laws prohibiting gaming devices.

§ 75-76-53. Powers of commission relative to sale of securities of licensees.

(1) The commission may:

(a) Adopt regulations governing the sale or offering for sale of securities, by public or other offerings, or any affiliated company of a corporate licensee.

(b) Pursue any remedy or combination of remedies provided in this chapter for a violation of any regulation adopted pursuant to this section, but any such violation does not affect the validity of the securities issued.

(2) As used in this section, unless the context otherwise requires, "sale" means every contract of sale, contract to sell, disposition or transfer, whether or not for value. The term includes any exchange and any material change in the rights, preferences, privileges or restrictions of or on outstanding securities.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 27, eff from and after passage (approved June 29, 1990).

§ 75-76-55. Acts prohibited of owners, licensees or employees without first obtaining gaming license.

(1) Except as otherwise provided in Section 75-76-34, it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, either

solely or in conjunction with others, without having first procured and thereafter maintaining in effect a state gaming license:

(a) To deal, operate, carry on, conduct, maintain or expose for play in the State of Mississippi any gambling game, including, without limitation, any gaming device, slot machine, race book or sports pool;

(b) To provide or maintain any information service the primary purpose of which is to aid the placing or making of wagers on events of any kind; or

(c) To receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, including, without limitation, any slot machine, gaming device, race book or sports pool.

(2) Except as otherwise provided in Section 75-76-34, it is unlawful for any person knowingly to permit any gambling game, including, without limitation, any slot machine, gaming device, race book or sports pool to be conducted, operated, dealt or carried on in any house or building or other premises owned by him, in whole or in part, by a person who is not licensed pursuant to this chapter or by his employee.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 28; Laws, 2013, ch. 327, § 2, eff from and after July 1, 2013.

ATTORNEY GENERAL OPINIONS

Conduct of a poker tournament constitutes gaming and gambling under Section 97-33-1 and the Gaming Control Act, and is prohibited unless conducted by a licensee of the Mississippi Gaming Commission. Janus, Mar. 25, 2005, A.G. Op. #05-0080.

RESEARCH REFERENCES

ALR. Gambling in private residence as prohibited or permitted by anti-gambling laws. 27 A.L.R.3d 1074.

Validity and construction of statute exempting gambling operations carried on by religious, charitable, or other nonprofit organizations from general prohibitions against gambling. 42 A.L.R.3d 663.

Construction and application of state or municipal enactments relating to policy or numbers games. 70 A.L.R.3d 897.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon. 98 A.L.R.3d 694.

Validity, construction, and application of statutes or ordinances involved in prosecutions for possession of bookmaking paraphernalia. 51 A.L.R.4th 796.

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of wagers or wagering information related to bookmaking. 53 A.L.R.4th 801.

Validity of statute or ordinance prohibiting or regulating bookmaking or pool selling. 80 A.L.R.4th 1079.

Validity, construction, and application of statute or ordinance prohibiting or regulating use or occupancy of premises for bookmaking or pool selling. 82 A.L.R.4th 356.

Construction and application of statute or ordinance prohibiting or regulating bookmaking or pool selling. 84 A.L.R.4th 740.

Am Jur. 38 Am. Jur. 2d, Gambling § 22 et seq.

12A Am. Jur. Pl & Pr Forms (Rev), Gambling, Forms 1-6 (regulation and licensing).

CJS. 38 C.J.S., Gaming § 131 et seq.

§ 75-76-57. Prohibited acts; exceptions; exemption of holding company from licensing requirements; information required for exceptions; persons subject to suitability finding and licensing requirements; licensees prohibited from contracting with persons found unsuitable.

(1) Except as otherwise provided in subsections (2) and (3) of this section, it is unlawful for any person to:

(a) Lend, let, lease or otherwise deliver or furnish any equipment of any gambling game, including any slot machine, for any interest, percentage or share of the money or property played, under guise of any agreement whatever, without having first procured a state gaming license.

(b) Lend, let, lease or otherwise deliver or furnish, except by a bona fide sale or capital lease, any slot machine under guise of any agreement whereby any consideration is paid or is payable for the right to possess or use that slot machine, whether the consideration is measured by a percentage of the revenue derived from the machine or by a fixed fee or otherwise, without having first procured a state gaming license.

(c) Furnish services or property, real or personal, on the basis of a contract, lease or license, pursuant to which that person receives payments based on earnings or profits or otherwise from any gambling game without having first procured a state gaming license.

(2) The provisions of subsection (1) do not apply to any person:

(a) Whose payments are a fixed sum determined in advance on a bona fide basis for the furnishing of services or property.

(b) Who furnishes services or property under a bona fide rental agreement or security agreement for gaming equipment.

(c) That is a wholly owned subsidiary of:

(i) A corporation or limited partnership holding a state gaming license; or

(ii) A holding company or intermediary company, or publicly traded corporation, that has registered pursuant to this chapter and which has fully complied with the laws applicable to it.

(d) Who is licensed as a distributor and who rents or leases any equipment of any gambling game under a bona fide agreement where the payments are a fixed sum determined in advance and not determined as a percentage of the revenue derived from the equipment or slot machine.

Receipts or rentals or charges for real property, personal property or services do not lose their character as payments of a fixed sum or as bona fide because of provisions in a contract, lease or license for adjustments in charges, rentals or fees on account of changes in taxes or assessments, escalations in the cost-of-living index, expansions or improvement of facilities, or changes in services supplied. Receipts of rentals or charges based on percentage between a corporate licensee or a licensee who is a limited partnership and the entities enumerated in paragraph (c) are permitted under this subsection.

(3) The commission may, upon issuance of its approval or a finding of suitability, exempt a holding company from the licensing requirements of subsection (1).

(4) The executive director may require any person exempted by the provisions of subsection (2) or paragraph (b) of subsection (1) to provide such information as he may require to perform his investigative duties.

(5) The executive director may require a finding of suitability, and the commission may require the licensing, of any person who:

(a) Owns any interest in the premises of a licensed establishment or owns any interest in real property used by a licensed establishment whether he leases the property directly to the licensee or through an intermediary.

(b) Repairs, rebuilds or modifies any gaming device.

(c) Manufactures or distributes chips or gaming tokens for use in Mississippi.

(6) If the commission finds a person described in subsection (5) unsuitable, a licensee shall not enter into any contract or agreement with that person without the prior approval of the executive director. Any other agreement between the licensee and that person must be terminated upon receipt of notice of the action by the commission. Any agreement between a licensee and a person described in subsection (5) shall be deemed to include a provision for its termination without liability on the part of the licensee upon a finding by the commission that the person is unsuitable. Failure expressly to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 29, eff from and after passage (approved June 29, 1990).

Cross References — Provisions applicable to holding companies with licensed subsidiaries, see § 75-76-233 et seq.

Penalty for violating provision of this section, see § 75-76-267.

RESEARCH REFERENCES

ALR. Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon. 98 A.L.R.3d 694.

Validity, construction, and application of statutes or ordinances involved in prosecutions for possession of bookmaking paraphernalia. 51 A.L.R.4th 796.

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of wagers or wagering information related to bookmaking. 53 A.L.R.4th 801.

Validity, construction, and application of statute or ordinance prohibiting or regulating use or occupancy of premises for bookmaking or pool selling. 82 A.L.R.4th 356.

Am Jur. 38 Am. Jur. 2d, Gambling § 22 et seq.

CJS. 38 C.J.S., Gaming § 131 et seq.

§ 75-76-59. Declaration of exemption from federal laws prohibiting gaming devices.

(1) Pursuant to Section 2 of that certain Act of the Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. Sections 1171-1177, the State of Mississippi, acting by and through the duly elected and qualified members of its Legislature, does hereby in this section, and in accordance with and in compliance with the provisions of Section 2 of such Act of Congress, declare and proclaim that it is exempt from the provisions of Section 2 of that certain Act of the Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being c. 1194, 64 Stat. 1134.

(2) All shipments of gambling devices, including slot machines, into this state, the registering, recording and labeling of which has been duly had by the manufacturer or dealer thereof in accordance with Sections 3 and 4 of that certain Act of the Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. Sections 1171-1177, shall be deemed legal shipments thereof into this state.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 30, eff from and after passage (approved June 29, 1990).

Federal Aspects — Transportation of Gambling Devices, 15 USCS §§ 1171-1178.

RESEARCH REFERENCES

ALR. Validity, construction, and application of 18 USCS 1955 prohibiting illegal gambling businesses. 21 A.L.R. Fed. 708.

What constitutes gambling device within meaning of 15 USCS § 1171(a) so as to be subject to forfeiture under Gambling Devices Act of 1962 (15 USCS §§ 1171-1178). 83 A.L.R. Fed. 177.

Am Jur. 38 Am. Jur. 2d, Gambling § 87 et seq.

Lawyers' Edition. Validity and construction of federal statute (18 USCS § 1953) dealing with interstate transportation of wagering paraphernalia—federal cases. 17 L. Ed. 2d 984.

LICENSING AND FINDINGS OF SUITABILITY

SEC.
75-76-61. Persons with power to exercise influence over licensee required to be licensed; termination of agreements upon failure to obtain license.
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fications; qualifications for license to operate gaming establishment; statements relevant to licensing or suitability finding absolutely privileged; licensing of corporations and limited partnerships.
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75-76-81. Commissioner of Revenue of the Department of Revenue to collect all taxes, fees, penalties, etc.; due date of gross revenue fees; application of sales tax law; funding of agency expenses; deposit of monies into State General Fund.
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75-76-87. Confidentiality of applications, returns and information; exceptions.
75-76-89. Merger of multiple licenses issued to same person; more than one licensed operation at single establishment prohibited; permission required to establish sports pool or race book on premises of licensed establishment.
75-76-91. Licenses to be posted by licensees; inspection by authorized state, county and municipal officials.
75-76-93. Continuation of licenses upon payment of fees, taxes and penalties; penalty for late payments; penalties for failure to pay fees.
75-76-95. Licensees to maintain current report on file with executive director; commission to review current report.
75-76-97. Unlawful to have any relationship with licensee with respect to gaming operation except in accordance with regulations.
75-76-99. Operating or maintaining gaming device not approved for testing or operation prohibited; list of approved devices; regulations.
75-76-101. Use of chips, tokens, etc. or legal tender required for all gaming; physical presence of patrons on licensed premises required for participation.

§ 75-76-61. Persons with power to exercise influence over licensee required to be licensed; termination of agreements upon failure to obtain license.

(1) Except for persons associated with licensed corporations or limited partnerships and required to be licensed, each employee, agent, guardian,

personal representative, lender or holder of indebtedness of a gaming licensee who, in the opinion of the commission, has the power to exercise a significant influence over the licensee's operation of a gaming establishment shall be required to apply for a license.

(2) A person required to be licensed pursuant to subsection (1) of this section shall apply for a license within thirty (30) days after the executive director requests that he do so.

(3) If an employee required to be licensed under subsection (1):

(a) Does not apply for a license within thirty (30) days after being requested to do so by the executive director, and the commission makes a finding of unsuitability for that reason, or

(b) Is denied a license, or

(c) Has a license revoked by the commission,

the licensee by whom he is employed shall terminate his employment in any capacity in which he is required to be licensed and shall not permit him to exercise a significant influence over the operation of the gaming establishment upon being notified by registered or certified mail of that action.

(4) A gaming licensee or an affiliate of the licensee shall not pay to a person whose employment has been terminated pursuant to subsection (3) any remuneration for any service performed in any capacity in which he is required to be licensed, except for amounts due for services rendered before the date of receipt of notice of the action by the commission. Any contract or agreement for personal services or for the conduct of any activity at the licensed gaming establishment between a gaming licensee or an affiliate of the licensee and a person terminated pursuant to subsection (3) is subject to termination. Every such agreement shall be deemed to include a provision for its termination without liability on the part of the licensee or registered holding company upon a finding by the commission that the person is unsuitable to be associated with a gaming enterprise. Failure expressly to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

(5) A gaming licensee or an affiliate of the licensee shall not, without the prior approval of the executive director, enter into any contract or agreement with a person who is found unsuitable or who is denied a license or whose license is revoked by the commission or with any business enterprise under the control of that person after the date of receipt of notice of the action by the commission. Every contract or agreement for personal services to a gaming licensee or an affiliate or for the conduct of any activity at a licensed gaming establishment shall be deemed to include a provision for its termination without liability on the part of the licensee or registered holding company upon a finding by the commission that the person is unsuitable to be associated with a gaming enterprise. Failure expressly to include such a condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

(6) Without prior approval of the executive director a gaming licensee or an affiliate of the licensee shall not employ any person in a capacity for which

he is required to be licensed if he has been found unsuitable, or has been denied a license, or has had his license revoked by the commission, after the date of receipt of notice of the action by the commission.

(7) As used in this section, "affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a licensee.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 31, eff from and after passage (approved June 29, 1990).

§ 75-76-63. Other persons subject to findings of suitability and licensing; termination of agreements upon finding of unsuitability or failure to obtain license.

(1) The executive director may require a finding of suitability, and the commission may require the licensing, of any person who furnishes services or property to a gaming licensee under any arrangement pursuant to which the person receives payments based on earnings, profits or receipts from gaming. The executive director may require any such person to comply with the requirements of this chapter and with the regulations of the commission. If the commission determines that any such person is unsuitable, the executive director may require the arrangement to be terminated.

(2) If the premises of a licensed gaming establishment are directly or indirectly owned or under the control of the licensee therein, or of any person controlling, controlled by, or under common control with the licensee, the executive director may require the application of any person for a determination of suitability to be associated with a gaming enterprise if the person:

(a) Does business on the premises of the licensed gaming establishment;

(b) Does business with the licensed gaming establishment as a junket representative or ticket purveyor; or

(c) Provides any goods or services to the licensed gaming establishment for a compensation which the executive director finds to be grossly disproportionate to the value of the goods or services.

(3) If the commission determines that the person is unsuitable to be associated with a gaming enterprise, the association must be terminated. Any agreement which entitles a business other than gaming to be conducted on the premises, or entitles a person to conduct business with the licensed gaming establishment as set forth in paragraph (b) or (c) of subsection (2) of this section, is subject to termination upon a finding of unsuitability of the person associated therewith. Every such agreement must be deemed to include a provision for its termination without liability on the part of the licensee upon a finding by the commission that the person associated therewith is unsuitable to be associated with a gaming enterprise. Failure expressly to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

(4) If the application is not presented to the executive director within thirty (30) days following demand or the unsuitable association is not termi-

nated, the executive director may pursue any remedy or combination of remedies provided in this chapter.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 32, eff from and after passage (approved June 29, 1990).

§ 75-76-65. Conducting tournaments or contests in which persons pay fee for privilege of participating for prizes.

(1) A person shall not receive any consideration, direct or indirect, for conducting a tournament or contest in which persons pay a fee for the privilege of participating and in which prizes are awarded to winners, on behalf of or in conjunction with a gaming licensee, unless he has registered with the executive director in the manner prescribed by the commission and supplies such information as the executive director requires or unless he is an officer or employee of the licensee.

(2) Any person who conducts a tournament or contest on behalf of or in conjunction with a gaming licensee may be required by the commission to be licensed by it as well as registered with the executive director. Any person so required must apply for a license within thirty (30) days after the decision of the commission requiring him to obtain a license.

(3) If any person required to be licensed pursuant to subsection (2) of this section:

(a) Does not apply for a license within thirty (30) days after the decision of the commission that he must be licensed, and the commission finds him unsuitable for that reason; or

(b) Is denied a license,

the gaming licensee with whom he is associated shall terminate that association upon notification from the commission by registered or certified mail of its action.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 33, eff from and after passage (approved June 29, 1990).

RESEARCH REFERENCES

ALR. Private contests and lotteries: entrants' rights and remedies. 64 A.L.R.4th 1021.

§ 75-76-67. Application for license or finding of suitability; qualifications; disqualifications; qualifications for license to operate gaming establishment; statements relevant to licensing or suitability finding absolutely privileged; licensing of corporations and limited partnerships.

(1) Any person who the commission determines is qualified to receive a license or be found suitable under the provisions of this chapter, having due

consideration for the proper protection of the health, safety, morals, good order and general welfare of the inhabitants of the State of Mississippi and the declared policy of this state, may be issued a state gaming license or found suitable. The burden of proving his qualification to receive any license or be found suitable is on the applicant.

(2) An application to receive a license or be found suitable shall not be granted unless the commission is satisfied that the applicant is:

(a) A person of good character, honesty and integrity;

(b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; and

(c) In all other respects qualified to be licensed or found suitable consistent with the declared laws of the state.

(3) No person shall be granted a license or found suitable under the provisions of this chapter who has been convicted of a felony in any court of this state, another state, or the United States; and no person shall be granted a license or found suitable hereunder who has been convicted of a crime in any court of another state or the United States which, if committed in this state, would be a felony; and no person shall be granted a license or found suitable under the provisions of this chapter who has been convicted of a misdemeanor in any court of this state or of another state, when such conviction was for gambling, sale of alcoholic beverages to minors, prostitution, or procuring or inducing individuals to engage in prostitution.

(4) A license to operate a gaming establishment shall not be granted unless the applicant has satisfied the commission that:

(a) He has adequate business probity, competence and experience, in gaming or generally; and

(b) The proposed financing of the entire operation is:

(i) Adequate for the nature of the proposed operation; and

(ii) From a suitable source. Any lender or other source of money or credit which the commission finds does not meet the standards set forth in subsection (2) may be deemed unsuitable.

(5) An application to receive a license or be found suitable constitutes a request for a determination of the applicant's general character, integrity and ability to participate or engage in, or be associated with gaming. Any written or oral statement made in the course of an official proceeding of the commission or the executive director or any witness testifying under oath which is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

(6) The commission may, in its discretion, grant a license to a corporation which has complied with the provisions of this chapter.

(7) The commission may, in its discretion, grant a license to a limited partnership which has complied with the provisions of this chapter.

(8) No limited partnership, except one whose sole limited partner is a publicly traded corporation which has registered with the commission, or business trust or organization or other association of a quasi-corporate character is eligible to receive or hold any license under this chapter unless all persons having any direct or indirect interest therein of any nature whatsoever, whether financial, administrative, policymaking or supervisory, are individually qualified to be licensed under the provisions of this chapter.

(9) The commission may, by regulation, limit the number of persons who may be financially interested and the nature of their interest in any corporation or other organization or association licensed under this chapter, and may establish such other qualifications of licenses as the commission, in its discretion, deems to be in the public interest and consistent with the declared policy of the state.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 34, eff from and after passage (approved June 29, 1990).

Cross References — Issuance of gaming licenses to corporations, see § 75-76-199 et seq.

Issuance of gaming licenses to limited partnerships, see § 75-76-219 et seq.

Issuance of gaming licenses to holding companies and intermediary companies, see § 75-76-233 et seq.

Issuance of gaming licenses to publicly traded corporations, see § 75-76-249 et seq.

ATTORNEY GENERAL OPINIONS

Dockside gaming may be permitted in waters of State of Mississippi south of coastal counties, including Bay of St. Louis and unzoned area from water's edge to corporate limits; however, Gaming Commission may refuse to permit operation of casino in unzoned waters. Rafferty, August 27, 1992, A.G. Op. #92-0161.

§ 75-76-69. Suitability finding and licensing when interest in gaming establishment made subject matter of revocable trust; filing of copy of trust instrument with executive director.

A person owning an interest in a gaming establishment who is licensed or has been found suitable by the commission does not have to requalify for a license or a finding of suitability whenever he makes his interest the subject matter of a revocable trust in which he retains the entire interest as the sole beneficiary. The settlor of such a trust must file a copy of the trust instrument or any amendment thereof with the executive director before the transfer of the interest becomes effective and before the effective date of any amendment.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 35, eff from and after passage (approved June 29, 1990).

§ 75-76-71. Person denied gaming license or found unsuitable not entitled to profit from investment; divestiture of interests; enforcement.

(1) A person who has had his application for a gaming license denied or who has been found unsuitable by the commission:

(a) Is not entitled to profit from his investment in a:

(i) Corporation other than a publicly traded corporation as that term is defined in this chapter;

(ii) Partnership;

(iii) Limited partnership; or

(iv) Joint venture which has applied for or been granted a license.

(b) Shall not retain his interest in a corporation, partnership, limited partnership or joint venture beyond that period prescribed by the commission.

(c) Shall not accept more for his interest in a corporation, partnership, limited partnership or joint venture than he paid for it or the market value on the date of the denial of the license or the finding of unsuitability.

(2) The executive director may proceed pursuant to this chapter to enforce the provisions of subsection (1).

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 36, eff from and after passage (approved June 29, 1990).

§ 75-76-73. Form of applications for gaming license or other commission action; supplemental forms.

(1) Application for a gaming license or other commission action shall be made to the executive director on forms furnished by the executive director and in accordance with the regulations of the commission.

(2) The application for a license shall include:

(a) The name of the proposed licensee.

(b) The location of his place or places of business.

(c) The gambling games, gaming devices or slot machines to be operated.

(d) The names of all persons directly or indirectly interested in the business and the nature of such interest.

(e) Such other information and details as the commission or the executive director may require in order to discharge their duties properly.

(3) The executive director shall furnish to the applicant supplemental forms which the applicant shall complete and file with the application. Such supplemental forms shall require, but shall not be limited to, complete information and details with respect to the applicant's antecedents, habits, character, criminal record, business activities, financial affairs and business associates, covering at least a ten-year period immediately preceding the date of filing of the application.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 37, eff from and after passage (approved June 29, 1990).

§ 75-76-75. Continuation of existing operations pending ruling on applications; executive director to investigate applicants; time for making recommendation on application; new application not barred by recommendation of denial of application.

(1) Provided that it files a complete application pursuant to this chapter and pays all application fees by January 1, 1991, any cruise vessel lawfully operating pursuant to Chapter 109, Title 27, Mississippi Code of 1972, on July 1, 1990, may continue to operate until the commission determines whether to approve or deny the application under the provisions of this chapter or regulations adopted by the commission.

(2) Within a reasonable time after filing of an application and such supplemental information as the commission or the executive director may require, the executive director shall commence the investigation of the applicant and shall conduct such proceedings in accordance with applicable regulations as the commission may deem necessary.

(3) If a person has applied for a position which cannot be held pending licensure or approval by the commission, the executive director shall use his best efforts to make a recommendation to the commission concerning the application not longer than nine (9) months after the application and supporting data are completed and filed with the executive director. If denial of the application is recommended, the executive director shall prepare and file with the commission a written report of reasons upon which the recommendation is based.

(4) A recommendation of denial of an application is without prejudice to a new and different application if made in conformity to regulations applicable to such situations.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 38, eff from and after passage (approved June 29, 1990).

§ 75-76-77. Executive director to present recommendations to commission; commission action on recommendations; failure of commission to act; written decision required when application denied.

(1) The executive director shall present his recommendation upon an application to the commission at the next meeting of the commission.

(2) The commission may, after considering the recommendation of the executive director, issue to the applicant named, as a natural person, and to the licensed gaming establishment, as a business entity, under the name or style therein designated, a state gaming license, or may deny the same. The commission may limit the license or place such conditions thereon as it may

deem necessary in the public interest. The commission may, if it considers necessary, issue a probationary license. No state gaming license may be assigned either in whole or in part.

(3) After the issuance of the license, it shall continue in effect upon proper payment of the state license fees and any other fees, taxes and penalties, as required by law and the regulations of the commission, subject to the power of the commission to revoke, suspend, condition or limit licenses.

(4) The commission may further limit or place such conditions as it may deem necessary in the public interest upon any registration, finding of suitability or approval for which application has been made.

(5) After the executive director has made a recommendation for denial of an application, the commission, after considering the recommendation of the executive director, may:

(a) Deny the application;

(b) Remand the matter to the executive director for such further investigation and reconsideration as the commission may order; or

(c) By unanimous vote of the members present, grant the application for a license, registration, finding of suitability or approval.

(6) If the commission is not satisfied that an applicant recommended by the executive director is qualified to be licensed under this chapter, the commission may cause to be made such investigation into and conduct such hearings concerning the qualifications of the applicant in accordance with its regulations as it may deem necessary.

(7) If the commission desires further investigation be made or desires to conduct any hearings, it shall, within thirty (30) days after presentation of the recommendation of the executive director, so notify the applicant and set a date for hearing. Final action by the commission must be taken within one hundred twenty (120) days after the recommendation of the executive director has been presented to the commission. Failure of the commission to take action within one hundred twenty (120) days shall be deemed to constitute approval of the applicant by the commission, and a license must be issued forthwith upon compliance by the applicant.

(8) The commission has full and absolute power and authority to deny any application for any cause it deems reasonable. If an application is denied, the commission shall prepare and file its written decision upon which its order denying the application is based.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 39, eff from and after passage (approved June 29, 1990).

§ 75-76-79. Unlawful to operate any form of manufacture, selling or distribution of gaming device without required licenses; exceptions; manufacturer's or distributor's licenses; application of Sections 75-76-199 through 75-76-265; effect of finding of unsuitability; license fees; findings of suitability; inspections of gaming devices and associated equipment; inspection fees.

(1)(a) Except as otherwise provided in paragraphs (b) and (c) of this subsection, it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, to operate, carry on, conduct or maintain any form of manufacture, selling or distribution of any gaming device for use or play in Mississippi or for distribution outside of Mississippi without first procuring and maintaining all required federal and state licenses.

(b) A lessor who specifically acquires equipment for a capital lease is not required to be licensed under this section.

(c) The holder of a state gaming license or the holding company of a corporate licensee may, within two (2) years after cessation of business or upon specific approval by the executive director, dispose of by sale in a manner approved by the executive director, any or all of its gaming devices, including slot machines, without a distributor's license. In cases of bankruptcy of a state gaming licensee or foreclosure of a lien by a bank or other person holding a security interest for which gaming devices are security in whole or in part for the lien, the executive director may authorize the disposition of the gaming devices without requiring a distributor's license.

(d) Any person whom the commission determines is a suitable person to receive a license under the provisions of this section may be issued a manufacturer's or distributor's license. The burden of proving his qualification to receive or hold a license under this section is at all times on the applicant or licensee.

(e) Every person who must be licensed pursuant to this section is subject to the provisions of Sections 75-76-199 through 75-76-265, unless exempted from those provisions by the commission.

(f) The commission may exempt, for any purpose, a manufacturer, seller or distributor from the provisions of Sections 75-76-199 through 75-76-265, if the commission determines that the exemption is consistent with the purposes of this chapter.

(g) As used in this section, "holding company" has the meaning ascribed to it in Section 75-76-199.

(2) If the commission determines that a manufacturer or distributor is unsuitable to receive or hold a license:

(a) No new gaming device or associated equipment manufactured by the manufacturer or distributed by the distributor may be approved;

(b) Any previously approved device or associated equipment manufactured by the manufacturer or distributed by the distributor is subject to revocation of approval if the reasons for the denial of the license also apply to that device or associated equipment;

(c) No new device or associated equipment manufactured by the manufacturer or distributed by the distributor may be sold, transferred or offered for use or play in Mississippi; and

(d) Any association or agreement between the manufacturer or distributor and a licensee must be terminated, unless otherwise provided by the commission. An agreement between such a manufacturer or distributor of gaming devices or associated equipment and a licensee shall be deemed to include a provision for its termination without liability on the part of the licensee upon a finding by the commission that the manufacturer is unsuitable to be associated with a gaming enterprise. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

(3) Failure of a licensee to terminate any association or agreement with a manufacturer or distributor of gaming devices or associated equipment after receiving notice of a determination of unsuitability, the denial of a license or failure to file a timely application for a license, is an unsuitable method of operation.

(4) There is hereby imposed and levied on each applicant for a manufacturer's, seller's or distributor's license under this section an annual license fee in the following amount:

(a) For the issuance or continuation of a manufacturer's license, One Thousand Dollars ($1,000.00).

(b) For the issuance or continuation of a seller's or distributor's license, Five Hundred Dollars ($500.00).

This fee is to be paid by the applicant to the State Tax Commission on or before the filing of the application for a manufacturer's, seller's or distributor's license by the applicant. Upon such payment the Chairman of the State Tax Commission shall certify to the executive director that such fee has been paid by the applicant.

Except for those amounts that a person issued a manufacturer's license under this section may charge for goods supplied or services rendered, the person holding the manufacturer's license may not be directly reimbursed by a holder of a gaming license for the cost of any fee paid by the person for the issuance or continuation of such a license, whether imposed under this section or any other provision of this chapter.

(5) A manufacturer or distributor of associated equipment who sells, transfers or offers the associated equipment for use or play in Mississippi may be required by the executive director to file an application for a finding of suitability to be a manufacturer or distributor of associated equipment.

Any person who directly or indirectly involves himself in the sale, transfer or offering for use or play in Mississippi of associated equipment who is not otherwise required to be licensed as a manufacturer or distributor may be required by the executive director to file an application for a finding of suitability to be a manufacturer or distributor of associated equipment.

If an application for a finding of suitability is not submitted within thirty (30) days after demand by the executive director, he may pursue any remedy or combination of remedies provided in this chapter.

(6) The executive director and his employees may inspect every gaming device which is manufactured, sold or distributed:

(a) For use in this state, before the gaming device is put into play.

(b) In this state for use outside this state, before the gaming device is shipped out of this state.

The executive director may inspect every gaming device which is offered for play within this state by a licensee.

The executive director may inspect all associated equipment which is manufactured, sold or distributed for use in this state before the equipment is installed or used by a gaming licensee.

In addition to all other fees and charges imposed by this chapter, the executive director may determine an inspection fee with regard to each manufacturer, seller or distributor which must not exceed the actual cost of inspection and investigation. Upon such determination, the executive director shall certify to the Chairman of the State Tax Commission the amount of the inspection fee and the name and address of the applicant. Upon such certification the State Tax Commission shall proceed to assess and collect such inspection fee from the applicant.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 40; Laws, 2010, ch. 431, § 7, eff from and after passage (approved Mar. 24, 2010.)

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

Cross References — Definition of manufacturer's, seller's, or distributor's license as meaning license issued pursuant to this section, see § 75-76-5.

RESEARCH REFERENCES

ALR. Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statutes or ordinance. 1 A.L.R.3d 726.

Constitutionality of statutes providing for destruction of gambling devices. 14 A.L.R.3d 366.

Validity of criminal legislation making possession of gambling or lottery devices or paraphernalia presumptive or prima facie evidence of other incriminating facts. 17 A.L.R.3d 491.

Validity, construction, and application of statutes or ordinances involved in prosecutions for possession of bookmaking paraphernalia. 51 A.L.R.4th 796.

Validity of state or local gross receipts tax on gambling. 21 A.L.R.5th 812.

What constitutes gambling device within meaning of 15 USCS sec. 1171(a) so as to be subject to forfeiture under Gambling Devices Act of 1962 (15 USCS §§ 1171-1178). 83 A.L.R. Fed. 177.

Am Jur. 38 Am. Jur. 2d, Gambling §§ 64 et seq.

12A Am. Jur. Pl & Pr Forms (Rev), Gambling, Forms 4-6 (seizure of gambling devices).

CJS. 38 C.J.S., Gaming § 169.

Lawyers' Edition. Validity and construction of federal statute (18 USCS § 1953) dealing with interstate transportation of wagering paraphernalia—federal cases. 17 L. Ed. 2d 984.

§ 75-76-81. Commissioner of Revenue of the Department of Revenue to collect all taxes, fees, penalties, etc.; due date of gross revenue fees; application of sales tax law; funding of agency expenses; deposit of monies into State General Fund.

Except as otherwise provided in this section, the Chairman of the State Tax Commission shall assess and collect all taxes, fees, licenses, interest, penalties, damages and fines imposed by this chapter, and is hereby empowered to promulgate rules and regulations to administer such collections. Any records or other documents submitted by the licensee, or on his behalf, to the Mississippi Gaming Commission or executive director shall be made available to the Chairman of the State Tax Commission or his authorized agent upon written request.

The gross revenue fees levied by this chapter shall be due and payable on or before the twentieth day of the month next succeeding the month in which the fees accrue except as otherwise provided. The licensee shall make a return showing the gross revenue and compute the fee due for the period.

Except for fees imposed under Section 75-76-33(2)(f), all administrative provisions of the sales tax law, and amendments thereto, including those which provide for collection and administrative appeals procedures, fix damages, penalties and interest for failure to comply with the provisions of said sales tax law, and all other requirements and duties imposed upon any licensee or taxpayer, shall apply to all persons liable for taxes, fees and all other monies imposed under the provisions of this chapter. However, fines or other assessments levied by the Mississippi Gaming Commission or the executive director will not be considered due and payable until thirty (30) days after final determination of such fines or assessments. The Chairman of the State Tax Commission shall exercise all power and authority and perform all duties with respect to licensees or taxpayers under this chapter as are provided in said sales tax law, except where there is conflict, then the provisions of this chapter shall control.

The Mississippi Gaming Commission shall assess and collect all fees imposed under Section 75-76-33(2)(f) and shall deposit the funds received from the fees into the Mississippi Gaming Commission Fund created in Section 75-76-325.

The determination and/or assessment of any taxes, fees, licenses, interest, penalties, damages and fines under this chapter by the Chairman of the State Tax Commission, the Executive Director of the Mississippi Gaming Commission or the Mississippi Gaming Commission shall be prima facie correct.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 41; Laws, 2010, ch. 431, § 2; Laws, 2016, ch. 459, § 6, eff from and after July 1, 2016.

Editor's Note — Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes — The 2016 amendment added the last two paragraphs.

Cross References — Prohibition against one state agency charging another state agencies fees, etc., for services or resources received, see § 27-104-35.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-37.

RESEARCH REFERENCES

ALR. Validity of state or local gross receipts tax on gambling. 21 A.L.R.5th 812.

§ 75-76-83. Appeal of decision of Board of Tax Appeals.

Any person aggrieved by the final order of the Board of Tax Appeals regarding any action taken by the Commissioner of Revenue and/or the Department of Revenue under the provisions of this chapter, including any person charged with any tax, fee, interest, penalties and damages imposed by this chapter and required to pay same, may appeal from such order as provided in Section 27-77-7.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 42; Laws, 2009, ch. 492, § 142, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see § 27-3-1 et seq.
Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.
Board of tax appeals, see § 27-4-1 et seq.

§ 75-76-85. Issuance of license; records; bond or security requirements; funding of agency expenses; deposit of monies into State General Fund.

(1) If satisfied that an applicant is eligible to receive a state gaming, manufacturing, selling or distributing license, and upon tender to the State Tax Commission of:

(a) All license fees and taxes as required by law and regulation of the Mississippi Gaming Commission; and

(b) A bond executed by the applicant as principal, and by a corporation qualified under the laws of this state as surety, payable to the State of Mississippi, and conditioned upon the payment of license fees, taxes, penalties, interest, fines and the faithful performance of all requirements imposed by law or regulation or the conditions of the license, the commission shall issue and deliver to the applicant a license entitling him to engage in the gaming, manufacturing, selling or distributing operation for which he is licensed. The executive director shall prepare and maintain a written record of the specific terms and conditions of any license issued and delivered and of any modification to the license. A duplicate of the record must be delivered to the applicant or licensee.

(2) The Chairman of the State Tax Commission shall fix the amount of the bond to be required under subsection (1). The bond so furnished may be applied to the payment of any unpaid liability of the licensee due to the State of Mississippi.

(3) In lieu of a bond an applicant may deposit with the commission a like amount of lawful money of the United States or any other form of security authorized by the commission. If security is provided in the form of a savings certificate, certificate of deposit or investment certificate, the certificate must state that the amount is unavailable for withdrawal except upon order of the commission.

(4) If the requirement for a bond is satisfied in:

(a) Cash, the commission shall deposit the money in the State Treasury for credit to the fund for bonds of state gaming licensees which is hereby created as a special fund.

(b) Any other authorized manner, the security must be placed without restriction at the disposal of the commission, but any income must inure to the benefit of the licensee.

(5) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(6) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 43; Laws, 2016, ch. 459, § 7, eff from and after July 1, 2016.

Editor's Note — Section 27-3-4 provides that the terms "State Tax Commission" and "Chairman of the State Tax Commission" appearing in the laws of this state shall mean Department of Revenue and Commissioner of Revenue of the Department of Revenue.

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes — The 2016 amendment added (5) and (6).

Cross References — Prohibition against one state agency charging another state agencies fees, etc., for services or resources received, see § 27-104-35.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-37.

§ 75-76-87. Confidentiality of applications, returns and information; exceptions.

(1) Applications, returns and information contained therein filed or furnished under this chapter shall be confidential, and except in accordance with proper judicial order or as otherwise authorized by this chapter, it shall be unlawful for members of the State Tax Commission, the Mississippi Gaming Commission or members of the Central Data Processing Authority, or any former employee thereof to divulge or make known in any manner the amount of income or any particulars set forth or disclosed on any application, report or return required.

The term "proper judicial order" as used in this chapter shall not include subpoenas or subpoenas duces tecum but shall include only those orders entered by a court of record in this state after furnishing notice and a hearing to the taxpayer and the State Tax Commission. The court shall not authorize the furnishing of such information unless it is satisfied that the information is needed to pursue pending litigation wherein the return itself is in issue, or the judge is satisfied that the need for furnishing the information outweighs the rights of the taxpayer to have such information secreted.

(2) Such information contained on the application, returns or reports from the licensee or the Mississippi Gaming Commission may be furnished to: (a) members and employees of the State Tax Commission and the income tax department thereof, for the purpose of auditing, comparing and correcting returns; (b) the Attorney General, or any other attorney representing the state in any action in respect to the amount of tax under the provisions of this chapter; (c) the Mississippi Gaming Commission; or (d) the revenue depart-

ment of the other states or the federal government when said states of federal government grants a like comity to Mississippi.

(3) The State Auditor and the employees of his office shall have the right to examine only such tax returns as are necessary for auditing the State Tax Commission, or the Mississippi Gaming Commission and the same prohibitions against disclosure which apply to the State Tax Commission shall apply to the State Auditor and his office.

(4) Nothing in this section shall prohibit the Chairman of the State Tax Commission from making available information necessary to recover taxes, fees, fines or damages owing the state pursuant to the authority granted in Section 27-75-16.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 44, eff from and after passage (approved June 29, 1990).

Editor's Note — Section 2 of Chapter 622 of Laws of 1995 amended Section 25-53-3 to change the name of the "Central Data Processing Authority" (CDPA) to the "Mississippi Department of Information Technology Services" (MDITS) and provided that wherever the terms "Central Data Processing Authority" and "authority," when referring to the Central Data Processing Authority, are used in any law, the same shall mean the Mississippi Department of Information Technology Services.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

ATTORNEY GENERAL OPINIONS

Statute does not explicitly state that Gaming Commissioner or company owned by him may not contract with casino licensee or with contractor of casino licensee, although he would be prohibited from divulging confidential information. Irby, Feb. 10, 1994, A.G. Op. #93-0922.

§ 75-76-89. Merger of multiple licenses issued to same person; more than one licensed operation at single establishment prohibited; permission required to establish sports pool or race book on premises of licensed establishment.

(1) Except as otherwise provided in subsection (3) of this section, all licenses issued to the same person, including a wholly owned subsidiary of that person, for the operation of any game, including a sports pool or race book, which authorize gaming at the same establishment must be merged into a single gaming license. A gaming license may not be issued to any person if the issuance would result in more than one licensed operation at a single establishment, whether or not the profits or revenue from gaming are shared between the licensed operations.

(2) A person who has been issued a gaming license may establish a sports pool or race book on the premises of the establishment at which he conducts a gaming operation only after obtaining permission from the executive director.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 45, eff from and after passage (approved June 29, 1990).

Editor's Note — In the first sentence of subsection (1) there is a reference to "subsection (3) of this section," but there is no subsection (3) in this section. The section is set out above as it was enacted by Section 45 of Chapter 45, Laws of 1990, Ex Sess.

JUDICIAL DECISIONS

1. In general.

The Mississippi Gaming Control Act of 1990, §§ 75-76-1 to 75-76-281, does not legalize the operation of race book in licensed casinos. Mississippi Gaming Comm'n v. Imperial Palace of Miss., Inc., 751 So. 2d 1025 (Miss. 1999).

§ 75-76-91. Licenses to be posted by licensees; inspection by authorized state, county and municipal officials.

(1) All licenses issued under the provisions of this chapter must be posted by the licensee and kept posted at all times in a conspicuous place in the establishment for which issued until replaced by a succeeding license.

(2) All licenses may be inspected by authorized state, county and municipal officials.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 46, eff from and after passage (approved June 29, 1990).

§ 75-76-93. Continuation of licenses upon payment of fees, taxes and penalties; penalty for late payments; penalties for failure to pay fees.

(1) Subject to the power of the commission to deny, revoke, suspend, condition or limit licenses, any state license in force may be continued by the commission upon proper payment of state license fees and any other fees, taxes and penalties as required by law and the regulations of the commission.

(2) All state license fees and fees required by law must be paid to the State Tax Commission on or before the dates respectively provided by law or regulation for each fee.

(3) Any person failing to pay any state license fee or fees due at the times respectively provided shall pay in addition to such license fee or fees, a penalty of not less than Fifty Dollars ($50.00) or twenty-five percent (25%) of the amount due, whichever is the greater, but not more than One Thousand Dollars ($1,000.00), if the fees are less than ten (10) days late and in no case in excess of Five Thousand Dollars ($5,000.00). The penalty must be collected as are other charges, license fees and penalties under this chapter.

(4) Any person who operates, carries on or exposes for play any gambling game, gaming device or slot machine or who manufactures, sells or distributes any gaming device, equipment, material or machine used in gaming, after his license fee becomes subject to payment, and thereafter fails to pay such fee as provided in this section, is guilty of a misdemeanor and, in addition to the

penalties provided by law, is liable to the State of Mississippi for all license fees, taxes and penalties which would have been due for continuation of his license.

(5) If any licensee or other person fails to pay his license fee as provided in this section, the commission may order the immediate closure of all his gaming activity until all necessary fees, interest and penalties have been paid.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 47, eff from and after passage (approved June 29, 1990).

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" appearing in the laws of this state shall mean Department of Revenue.

Cross References — Penalties provided for in sections 75-76-93 and 75-76-103 as only penalties for putting additional games or slot machines into play or displaying such games or machines without proper licenses, see § 75-76-267.

Imposition of standard state assessment in addition to al court imposed fees or other penalties for any misdemeanor penalties, see § 99-19-73.

§ 75-76-95. Licensees to maintain current report on file with executive director; commission to review current report.

(1) Every licensee shall at all times maintain on file with the executive director a current report, verified by the affidavit of the person or an officer of a corporation and every stockholder thereof, to whom the license is issued, which shall set forth such information as may be required by the regulations of the commission.

(2) With respect to each licensee, the commission shall carefully review, not less frequently than once every three (3) years, the information in the current report required under subsection (1) to determine if there has been any substantial change in the information provided in the application for the initial license.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 48, eff from and after passage (approved June 29, 1990).

§ 75-76-97. Unlawful to have any relationship with licensee with respect to gaming operation except in accordance with regulations.

It is unlawful for any person to sell, purchase, lease, hypothecate, borrow or loan money, or create a voting trust agreement or any other agreement of any sort to or with any licensee in connection with any gaming operation licensed under this chapter, or with respect to any portion of such gaming operation, except in accordance with the regulations of the commission.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 49, eff from and after passage (approved June 29, 1990).

§ 75-76-99. Operating or maintaining gaming device not approved for testing or operation prohibited; list of approved devices; regulations.

(1) Any person who operates or maintains in this state any gaming device of a specific model, or which includes a significant modification, which the executive director has not approved for testing or for operation, is subject to disciplinary action by the executive director or the commission.

(2) The executive director shall maintain a list of approved gaming devices.

(3) The commission may adopt regulations relating to gaming devices and their significant modification.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 50, eff from and after passage (approved June 29, 1990).

RESEARCH REFERENCES

ALR. Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statutes or ordinance. 1 A.L.R.3d 726.

Constitutionality of statutes providing for destruction of gambling devices. 14 A.L.R.3d 366.

Validity of criminal legislation making possession of gambling or lottery devices or paraphernalia presumptive or prima facie evidence of other incriminating facts. 17 A.L.R.3d 491.

Validity, construction, and application of statutes or ordinances involved in prosecutions for possession of bookmaking paraphernalia. 51 A.L.R.4th 796.

What constitutes gambling device within meaning of 15 USCS § 1171(a) so as to be subject to forfeiture under Gambling Devices Act of 1962 (15 USCS §§ 1171-1178). 83 A.L.R. Fed. 177.

Am Jur. 38 Am. Jur. 2d, Gambling § 64 et seq.

12A Am. Jur. Pl & Pr Forms (Rev), Gambling, Forms 4-6 (seizure of gambling devices).

§ 75-76-101. Use of chips, tokens, etc. or legal tender required for all gaming; physical presence of patrons on licensed premises required for participation.

(1) All gaming must be conducted with chips, tokens or other instrumentalities approved by the executive director or with the legal tender of the United States.

(2) No licensee shall permit participation by a person in a game conducted in the licensed gaming establishment if such person is not physically present in the licensed gaming establishment during the period of time when such game is being conducted, and all games and the participation of patrons therein shall be entirely located and conducted on the licensed premises.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 51, eff from and after passage (approved June 29, 1990).

RESEARCH REFERENCES

ALR. Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of wagers or wagering information related to bookmaking. 53 A.L.R.4th 801.

Validity, construction, and application of statute or ordinance prohibiting or regulating use of messenger services to place wagers in pari-mutuel pool. 78 A.L.R.4th 483.

DISCIPLINARY ACTIONS

Sec.

75-76-103. Reasons for investigations by executive director; complaint by executive director; commission to appoint hearing examiner; review by commission; order of commission; automatic revocation of license or finding of suitability upon felony conviction.
75-76-105. Emergency orders of commission.
75-76-107. Requirements of complaint; service of complaint upon respondent; answer of respondent; failure to answer or appear; time and place of hearing; notice.
75-76-109. Issuance of subpoenas for hearing; witness fees, mileage and expenses; payment of costs; depositions.
75-76-111. Proceedings at hearing before hearing examiner; rules relating to evidence and witnesses; official notice of certain information; affidavits.
75-76-113. Stenographic or phonographic report of hearings required.
75-76-115. Amended or supplemental pleadings authorized.
75-76-117. Contempt of hearing.
75-76-119. Written decisions and recommendation of hearing examiner; review of decision and recommendation by commission; decision or order of commission.
75-76-121. Circuit court review of decision or order of commission; enforcement of decision or order not stayed.
75-76-123. Record on review; filing with reviewing court.
75-76-125. Motion requesting taking of additional evidence by commission; modification of decision or order by commission; standard of review; grounds for reversing decision or order of commission.
75-76-127. Supreme Court review of circuit court decision; availability of judicial review of particular decisions or orders of commission; availability of writs or equitable proceedings.

§ 75-76-103. Reasons for investigations by executive director; complaint by executive director; commission to appoint hearing examiner; review by commission; order of commission; automatic revocation of license or finding of suitability upon felony conviction.

(1) The executive director shall make appropriate investigations:

(a) To determine whether there has been any violation of this chapter or of any regulations adopted thereunder.

(b) To determine any facts, conditions, practices or matters which it may deem necessary or proper to aid in the enforcement of any such law or regulation.

(c) To aid in adopting regulations.

(d) To secure information as a basis for recommending legislation relating to this chapter.

(2) If after any investigation the executive director is satisfied that a license, registration, finding of suitability, or prior approval by the commission of any transaction for which approval was required or permitted under the provisions of this chapter should be limited, conditioned, suspended or revoked, he shall initiate a hearing by filing a complaint with the commission and transmit therewith a summary of evidence in his possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the executive director to the licensee.

(3) Upon receipt of the complaint of the executive director, the commission shall review all matter presented in support thereof and shall appoint a hearing examiner to conduct further proceedings.

(4) After such proceedings as may be required by this chapter the hearing examiner may recommend that the commission take any or all of the following actions:

(a) Limit, condition, suspend or revoke the license of any licensed gaming establishment or the individual license of any licensee without affecting the license of the establishment;

(b) Limit, condition, suspend or revoke any registration, finding of suitability, or prior approval given or granted to any applicant by the commission;

(c) Order a licensed gaming establishment to keep an individual licensee from the premises of the licensed gaming establishment or not to pay the licensee any remuneration for services or any profits, income or accruals on his investment in the licensed gaming establishment; and

(d) Fine each person or entity or both, who was licensed, registered or found suitable or who previously obtained approval for any act or transaction for which commission approval was required or permitted, not more than One Hundred Thousand Dollars ($100,000.00) for each separate violation of the provisions of this chapter or of the regulations of the commission which is the subject of an initial complaint and not more than Two Hundred Fifty Thousand Dollars ($250,000.00) for each separate violation of the provisions of this chapter or of the regulations of the commission which is the subject of any subsequent complaint.

(5) The hearing examiner shall prepare a written decision containing his recommendation to the commission and shall serve it on all parties. Any party that disagrees with the hearing examiner's recommendation may ask the commission to review the recommendation within ten (10) days of service of the recommendation. The commission may hold a hearing to consider the recommendation whether there has been a request to review the recommendation or not.

(6) If the commission decides to review the recommendation, it shall give notice of that fact to all parties within thirty (30) days of the recommendation and shall schedule a hearing to review the recommendation. The commission's review shall be de novo but shall be based upon the evidence presented before

the hearing examiner. The commission may remand the case to the hearing examiner for the presentation of additional evidence upon a showing of good cause why the evidence could not have been presented at the previous hearing.

(7) If the commission decides not to review the recommendation within thirty (30) days, the recommendation becomes the final order of the commission.

(8) If the commission limits, conditions, suspends or revokes any license or imposes a fine, or limits, conditions, suspends or revokes any registration, finding of suitability, or prior approval, it shall issue its written order therefor after causing to be prepared and filed the hearing examiner's written decision upon which the order is based.

(9) Any such limitation, condition, revocation, suspension or fine so made is effective until reversed upon judicial review, except that the commission may stay its order pending a rehearing or judicial review upon such terms and conditions as it deems proper.

(10) Judicial review of any such order or decision of the commission may be had in accordance with the provisions of this chapter.

(11) A license or finding of suitability for any individual is automatically revoked if such person is convicted of a felony in any court of this state, another state, or the United States or if such person is convicted of a crime in any court of another state or the United States which, if committed in this state, would be a felony. Any appeal from such conviction shall not act as a supersedeas to the revocation required by this subsection.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 52, eff from and after passage (approved June 29, 1990).

Cross References — Application of procedures for disciplinary action provided for in §§ 75-76-103 through 75-76-119 to summary suspension of work permit, see § 75-76-135.

Application of hearing procedures provided for in §§ 75-76-103 through 75-76-119 to revocation of work permits, see § 75-76-137.

Failure to notify executive director or patron when licensee refuses payment of alleged winnings as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-159.

Failure of licensee to pay patron's claim after decision of executive director as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-165.

Application of penalty provisions of this section to violations of provisions governing acceptance of credit instruments by licensees, see § 75-76-175.

Penalties provided for in sections 75-76-93 and 75-76-103 as only penalties for putting additional games or slot machines into play or displaying such games or machines without proper licenses, see § 75-76-267.

JUDICIAL DECISIONS

1. Jurisdiction.

In a case in which a gambler alleged that a county, a deputy sheriff, a casino company, and a casino exercised dominion and control over his property, i.e., the money that was represented by the casino chips he undisputedly won, which were inconsistent with his ownership rights because they would not cash in his chips unless and until he handed over his drivers license to the casino, his trespass to chattels and conversion claims were not within the exclusive jurisdiction of the Mississippi Gaming Commission pursuant to Miss. Code Ann. §§ 75-76-103 and 75-76-157(2). The gambler alleged that he never agreed to hand over his ID to the casino and they would not have received and copied it but for the actions of the county sheriff's department taking his ID from him. Grosch v. Tunica County, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 89364 (N.D. Miss. July 2, 2008).

§ 75-76-105. Emergency orders of commission.

The commission may issue an emergency order for suspension, limitation or conditioning of a license, registration, or finding of suitability or may issue an emergency order requiring a licensed gaming establishment to keep an individual licensee from the premises of the licensed gaming establishment or not to pay such licensee any remuneration for services or any profits, income or accruals on his investment in the licensed gaming establishment in the following manner:

(a) An emergency order may be issued only when the commission believes that:

(i) Any person has willfully failed to report, pay or truthfully account for and pay over any license fee or tax imposed by the provisions of this chapter or willfully attempted in any manner to evade or defeat any such license fee, tax or payment thereof;

(ii) Any person has cheated at any gambling game;

(iii) There has been a violation of subsection (1) of Section 75-76-57;

(iv) Such action is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare.

(b) The emergency order must set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action.

(c) An emergency order may be issued only with the approval of and upon signature by not less than two (2) members of the commission.

(d) The emergency order is effective immediately upon issuance and service upon the licensee or resident agent of the licensee or, in cases involving registration or findings of suitability, upon issuance and service upon the person or entity involved or resident agent of the entity involved. The emergency order may suspend, limit, condition or take other action in relation to the license of one or more persons in an operation without affecting other individual licensees or the licensed gaming establishment. The emergency order remains effective until further order of the commission or final disposition of the case.

(e) Within five (5) days after issuance of an emergency order, the executive director shall cause a complaint to be filed and served upon the person or entity involved. Thereafter, the person or entity against whom the emergency order has been issued and served is entitled to a hearing before the commission and to judicial review of the decision and order of the commission thereon.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 53, eff from and after passage (approved June 29, 1990).

Cross References — Violation of subsection (1) of this section as ground for issuance of emergency order by the commission, see § 75-76-105.

Application of procedures for disciplinary action provided for in §§ 75-76-103 through 75-76-119 to summary suspension of work permit, see § 75-76-135.

Application of hearing procedures provided for in §§ 75-76-103 through 75-76-119 to revocation of work permits, see § 75-76-137.

Failure to notify executive director or patron when licensee refuses payment of alleged winnings as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-159.

Failure of licensee to pay patron's claim after decision of executive director as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-165.

Application of penalty provisions of this section to violations of provisions governing acceptance of credit instruments by licensees, see § 75-76-175.

§ 75-76-107. Requirements of complaint; service of complaint upon respondent; answer of respondent; failure to answer or appear; time and place of hearing; notice.

(1) The complaint referred to in this chapter must be a written statement of charges which must set forth in ordinary and concise language the acts or omissions with which the respondent is charged. It must specify the statutes and regulations which the respondent is alleged to have violated but shall not consist merely of charges raised in the language of the statutes or regulations.

(2) Upon the filing of the complaint, the executive director shall serve a copy of the complaint upon the respondent either personally or by registered or certified mail at his address on file with the executive director.

(3) Except as provided in subsection (4) of this section, the respondent must answer within twenty (20) days after the service of the complaint. In his answer the respondent:

(a) Must state in short and plain terms his defenses to each claim asserted.

(b) Must admit or deny the facts alleged in the complaint.

(c) Must state with respect to which allegations he is without such knowledge or information as to form a belief concerning their truth. Such allegations shall be deemed denied.

(d) Must affirmatively set forth any matter which constitutes an avoidance or affirmative defense.

(e) May demand a hearing. Failure to demand a hearing constitutes a waiver of the right to a hearing and to judicial review of any decision or order of the commission, but the commission may order a hearing even if the respondent so waives his right.

(4) Failure to answer or to appear at the hearing constitutes an admission by the respondent of all facts alleged in the complaint. The commission may take action based on such an admission and on other evidence without further notice to the respondent. If the commission takes action based on such an

admission, it shall include in the record which evidence was the basis for the action.

(5) The commission shall determine the time and place of the hearing as soon as is reasonably practical after receiving the respondent's answer. The executive director shall deliver or send by registered or certified mail a notice of hearing to all parties at least ten (10) days before the hearing.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 54, eff from and after passage (approved June 29, 1990).

Cross References — Application of procedures for disciplinary action provided for in §§ 75-76-103 through 75-76-119 to summary suspension of work permit, see § 75-76-135.

Application of hearing procedures provided for in §§ 75-76-103 through 75-76-119 to revocation of work permits, see § 75-76-137.

Failure to notify executive director or patron when licensee refuses payment of alleged winnings as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-159.

Failure of licensee to pay patron's claim after decision of executive director as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-165.

Application of penalty provisions of this section to violations of provisions governing acceptance of credit instruments by licensees, see § 75-76-175.

§ 75-76-109. Issuance of subpoenas for hearing; witness fees, mileage and expenses; payment of costs; depositions.

(1) Prior to a hearing before a hearing examiner, and during a hearing upon reasonable cause shown, the hearing examiner shall issue subpoenas and subpoenas duces tecum at the request of a party. All witnesses appearing pursuant to subpoena, other than parties, officers or employees of the State of Mississippi or any political subdivision thereof, are entitled to receive fees and mileage in the same amounts and under the same circumstances as provided by law for witnesses in civil actions in the circuit courts. Witnesses entitled to fees or mileage who attend hearings at points so far removed from their residences as to prohibit return thereto from day to day are entitled, in addition to witness fees and mileage, to the expense allowance authorized for state officers and employees for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearings. Fees, subsistence and transportation expenses must be paid by the party at whose request the witness is subpoenaed. The commission may award as costs the amount of all such expenses to the prevailing party.

(2) The testimony of any material witness residing within or without the State of Mississippi who will be unavailable to testify at the hearing may be taken by deposition in the manner provided by the Mississippi Rules of Civil Procedure.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 55, eff from and after passage (approved June 29, 1990).

Cross References — Practice and procedures common to Mississippi courts, see § 11-1-1 et seq.

Application of procedures for disciplinary action provided for in sections 75-76-103 through 75-76-119 to summary suspension of work permit, see § 75-76-135.

Application of hearing procedures provided for in §§ 75-76-103 through 75-76-119 to revocation of work permits, see § 75-76-137.

Failure to notify executive director or patron when licensee refuses payment of alleged winnings as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-159.

Failure of licensee to pay patron's claim after decision of executive director as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-165.

Application of penalty provisions of this section to violations of provisions governing acceptance of credit instruments by licensees, see § 75-76-175.

§ 75-76-111. Proceedings at hearing before hearing examiner; rules relating to evidence and witnesses; official notice of certain information; affidavits.

(1) At all hearings before a hearing examiner other than investigative hearings:

(a) Oral evidence may be taken only upon oath or affirmation administered by the hearing examiner.

(b) Every party has the right to:

(i) Call and examine witnesses;

(ii) Introduce exhibits relevant to the issues of the case, including the transcript of testimony at any investigative hearing conducted by or on behalf of the commission or the executive director;

(iii) Cross-examine opposing witnesses on any matters relevant to the issues of the case, even though the matter was not covered in a direct examination;

(iv) Impeach any witness regardless of which party first called him to testify; and

(v) Offer rebuttal evidence.

(c) If the respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted and is sufficient in itself to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.

(e) The parties or their counsel may by written stipulation agree that certain specified evidence may be admitted even though such evidence might otherwise be subject to objection.

(2) The hearing examiner may take official notice of any generally accepted information or technical or scientific matter within the field of gaming and of any other fact which may be judicially noticed by the courts of this state.

The parties must be informed of any information, matters or facts so noticed and must be given a reasonable opportunity, on request, to refute such information, matters or facts by evidence or by written or oral presentation of authorities, the manner of such refutation to be determined by the commission.

(3) Affidavits may be received in evidence at any hearing in accordance with the following:

(a) The party wishing to use an affidavit must, not less than ten (10) days before the day set for hearing, serve upon the opposing party or counsel, either personally or by registered or certified mail, a copy of the affidavit which he proposes to introduce in evidence together with a notice as provided in paragraph (c) of this subsection.

(b) Unless the opposing party, within seven (7) days after such service, mails or delivers to the proponent a request to cross-examine the affiant, his right to cross-examine the affiant is waived, and the affidavit, if introduced in evidence, must be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefor is made in accordance with this paragraph, the affidavit may be introduced in evidence but must be given only the same effect as other hearsay evidence.

(c) The notice referred to in paragraph (a) must be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing set for the ________ day of ________, 2________. (Here insert name of affiant) will not be called to testify orally, and you will not be entitled to question him unless you notify the undersigned that you wish to cross-examine him. To be effective your request must be mailed or delivered to the undersigned on or before seven (7) days from the date this notice and the enclosed affidavit are served upon you.

____

(Party or Counsel)

____

(Address)

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 56, eff from and after passage (approved June 29, 1990).

Cross References — Application of procedures for disciplinary action provided for in §§ 75-76-103 through 75-76-119 to summary suspension of work permit, see § 75-76-135.

Application of hearing procedures provided for in §§ 75-76-103 through 75-76-119 to revocation of work permits, see § 75-76-137.

Failure to notify executive director or patron when licensee refuses payment of alleged winnings as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-159.

Failure of licensee to pay patron's claim after decision of executive director as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-165.

Application of penalty provisions of this section to violations of provisions governing acceptance of credit instruments by licensees, see § 75-76-175.

RESEARCH REFERENCES

ALR. Admissibility, in prosecution for gambling or gambling offense, of evidence of other acts of gambling. 64 A.L.R.2d 823.

Validity of criminal legislation making possession of gambling or lottery devices or paraphernalia presumptive or prima facie evidence of other incriminating facts. 17 A.L.R.3d 491.

§ 75-76-113. Stenographic or phonographic report of hearings required.

The proceedings at the hearing must be reported either stenographically or by a phonographic reporter.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 57, eff from and after passage (approved June 29, 1990).

Cross References — Application of procedures for disciplinary action provided for in §§ 75-76-103 through 75-76-119 to summary suspension of work permit, see § 75-76-135.

Application of hearing procedures provided for in §§ 75-76-103 through 75-76-119 to revocation of work permits, see § 75-76-137.

Failure to notify executive director or patron when licensee refuses payment of alleged winnings as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-159.

Failure of licensee to pay patron's claim after decision of executive director as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-165.

Application of penalty provisions of this section to violations of provisions governing acceptance of credit instruments by licensees, see § 75-76-175.

§ 75-76-115. Amended or supplemental pleadings authorized.

The hearing examiner or the commission may permit the filing of amended or supplemental pleadings and shall notify all parties thereof and provide a reasonable opportunity for objections thereto.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 58, eff from and after passage (approved June 29, 1990).

Cross References — Application of procedures for disciplinary action provided for in §§ 75-76-103 through 75-76-119 to summary suspension of work permit, see § 75-76-135.

Application of hearing procedures provided for in §§ 75-76-103 through 75-76-119 to revocation of work permits, see § 75-76-137.

Failure to notify executive director or patron when licensee refuses payment of alleged winnings as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-159.

Failure of licensee to pay patron's claim after decision of executive director as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-165.

Application of penalty provisions of this section to violations of provisions governing acceptance of credit instruments by licensees, see § 75-76-175.

§ 75-76-117. Contempt of hearing.

If any person in proceedings before the hearing examiner or the commission disobeys or resists any lawful order, or refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness, or thereafter refuses to be examined, or is guilty of misconduct during the hearing or so near the place thereof as to obstruct the proceeding, the commission may certify the facts to the circuit court in and for the county where the proceedings are held. The court shall thereupon issue an order directing the person to appear before the court and show cause why he should not be punished as for contempt. The court order and a copy of the statement of the commission must be served on the person cited to appear. Thereafter the court has jurisdiction of the matter, and the same proceedings must be had, the same penalties may be imposed and the person charged may purge himself of the contempt in the same way as in the case of a person who has committed a contempt in the trial of a civil action before a circuit court.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 59, eff from and after passage (approved June 29, 1990).

Cross References — Application of procedures for disciplinary action provided for in §§ 75-76-103 through 75-76-119 to summary suspension of work permit, see § 75-76-135.

Application of hearing procedures provided for in §§ 75-76-103 through 75-76-119 to revocation of work permits, see § 75-76-137.

Failure to notify executive director or patron when licensee refuses payment of alleged winnings as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-159.

Failure of licensee to pay patron's claim after decision of executive director as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-165.

Application of penalty provisions of this section to violations of provisions governing acceptance of credit instruments by licensees, see § 75-76-175.

§ 75-76-119. Written decisions and recommendation of hearing examiner; review of decision and recommendation by commission; decision or order of commission.

(1) After the hearing of a contested matter, the hearing examiner shall render a written decision on the merits which must contain findings of fact, a determination of the issues presented, and recommendation regarding the penalty to be imposed, if any. Copies of the decision and recommendation must be served on the parties personally or sent to them by registered or certified mail.

(2) The commission may, upon motion made within ten (10) days after service of a hearing examiner's decision and recommendation, or upon its own motion within thirty (30) days of the date of the decision and recommendation, order a hearing before the commission upon such terms and conditions as it may deem just and proper to review the decision and recommendation. After hearing, the commission may reverse, modify or affirm the hearing examiner's

decision. If the commission decides not to review the hearing examiner's decision and recommendation within thirty (30) days of the hearing examiner's decision, that decision shall become the final order of the commission.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 60, eff from and after passage (approved June 29, 1990).

Cross References — Application of procedures for disciplinary action provided for in §§ 75-76-103 through 75-76-119 to summary suspension of work permit, see § 75-76-135.

Application of hearing procedures provided for in §§ 75-76-103 through 75-76-119 to revocation of work permits, see § 75-76-137.

Failure to notify executive director or patron when licensee refuses payment of alleged winnings as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-159.

Commission may review decision of hearing examiner, on claim of patron for gaming debt not evidenced by credit instrument, as provided in this section, see § 75-76-161.

Failure of licensee to pay patron's claim after decision of executive director as ground for disciplinary action pursuant to §§ 75-76-103 through 75-76-119, see § 75-76-165.

Application of penalty provisions of this section to violations of provisions governing acceptance of credit instruments by licensees, see § 75-76-175.

§ 75-76-121. Circuit court review of decision or order of commission; enforcement of decision or order not stayed.

(1) Any person aggrieved by a final decision or order of the commission may obtain a judicial review thereof in the circuit court of the county in which the petitioner resides or has his or its principal place of business.

(2) The judicial review must be instituted by filing a petition within twenty (20) days after the effective date of the final decision or order. A petition may not be filed while a petition for rehearing or a rehearing is pending before the commission. The petition must set forth the order or decision appealed from and the grounds or reasons why petitioner contends a reversal or modification should be ordered.

(3) Copies of the petition must be served upon the executive director and all other parties of record, or their counsel of record, either personally or by certified mail.

(4) The court, upon a proper showing, may permit other interested persons to intervene as parties to the appeal or as friends of the court.

(5) The filing of the petition does not stay enforcement of the decision or order of the commission, but the commission itself may grant a stay upon such terms and conditions as it deems proper.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 61, eff from and after passage (approved June 29, 1990).

Cross References — Right of gaming employee whose work permit has been revoked to judicial review in manner prescribed by §§ 75-76-121 through 75-76-127, see § 75-76-137.

JUDICIAL DECISIONS

1. In general.

Mississippi Gaming Commission's denial of preliminary gaming site approval, a licensing decision, was appealable, since judicial review of denial of license or any part thereof is necessary to determine whether Commission has exceeded its authority. Mississippi Gaming Comm'n v. Board of Educ., 691 So. 2d 452 (Miss. 1997), reh'g denied, 695 So. 2d 601 (Miss. 1997).

School board, which leased land to casino operator, had standing to appeal decision by Mississippi Gaming Commission to deny preliminary site approval for gaming operations; by virtue of board's participation in site approval hearings and its joining with casino operator in timely appeal, board met statutory definition of party, and $180 million that school board stood to earn from casino operator's lease on property gave it a "colorable interest" in proceedings. Mississippi Gaming Comm'n v. Board of Educ., 691 So. 2d 452 (Miss. 1997), reh'g denied, 695 So. 2d 601 (Miss. 1997).

Despite statute generally allowing appeal of final decisions of Mississippi Gaming Commission (MGC), property owner did not have statutory right to appeal site request denial of MGC that was within its statutory authority; site approval was prerequisite to license, and therefore, owner was in same position of applicant for license, who specifically was precluded from appealing MGC's denial, limiting, conditioning or restricting of a license. Casino Magic Corp. v. Ladner, 666 So. 2d 452 (Miss. 1995).

§ 75-76-123. Record on review; filing with reviewing court.

(1) Upon written request of petitioner and upon payment of such reasonable costs and fees as the commission may prescribe, the complete record on review, or such parts thereof as are designated by the petitioner, must be prepared by the commission.

(2) The complete record on review must include copies of:

(a) All pleadings in the case;

(b) All notices and interim orders issued by the hearing examiner or the commission in connection with the case;

(c) All stipulations;

(d) The decision and order appealed from;

(e) A transcript of all testimony, evidence and proceedings at the hearing;

(f) The exhibits admitted or rejected; and

(g) Any other papers in the case.

The record on review may be shortened by stipulation of all parties to the review proceedings.

(3) The record on review must be filed with the reviewing court within thirty (30) days after service of the petition for review, but the court may allow the commission additional time to prepare and transmit the record on review.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 62, eff from and after passage (approved June 29, 1990).

Cross References — Right of gaming employee whose work permit has been revoked to judicial review in manner prescribed by §§ 75-76-121 through 75-76-127, see § 75-76-137.

§ 75-76-125. Motion requesting taking of additional evidence by commission; modification of decision or order by commission; standard of review; grounds for reversing decision or order of commission.

(1) The reviewing court may, upon motion therefor, order that additional evidence in the case be taken by the commission upon such terms and conditions as the court may deem just and proper. The motion must not be granted except upon a showing that the additional evidence is material and necessary and that sufficient reason existed for failure to present the evidence before the hearing examiner or the commission. The motion must be supported by an affidavit of the moving party or his counsel showing with particularity the materiality and necessity of the additional evidence and the reason why it was not introduced in the administrative hearing. Rebuttal evidence to the additional evidence must be permitted. In cases in which additional evidence is presented, the commission may modify its decisions and orders as the additional evidence may warrant and shall file with the reviewing court a transcript of the additional evidence together with any modifications of the decision and order, all of which become a part of the record on review.

(2) The review must be conducted by the court sitting without a jury, and must not be a trial de novo but is confined to the record on review.

(3) The reviewing court may affirm the decision and order of the commission, or it may remand the case for further proceedings or reverse the decision if the substantial rights of the petitioner have been prejudiced because the decision is:

(a) In violation of constitutional provisions;

(b) In excess of the statutory authority or jurisdiction of the commission;

(c) Made upon unlawful procedure;

(d) Unsupported by any evidence; or

(e) Arbitrary or capricious or otherwise not in accordance with law.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 63, eff from and after passage (approved June 29, 1990).

Cross References — Right of gaming employee whose work permit has been revoked to judicial review in manner prescribed by §§ 75-76-121 through 75-76-127, see § 75-76-137.

JUDICIAL DECISIONS

1. In general.

Supreme Court affords great deference to administrative agency in interpreting its own regulations; however, that deference will be of no material force where agency action is contrary to statutory language. Mississippi Gaming Comm'n v. Board of Educ., 691 So. 2d 452 (Miss. 1997), reh'g denied, 695 So. 2d 601 (Miss. 1997).

Mississippi Gaming Commission's denial of preliminary gaming site approval, a licensing decision, was appealable, since judicial review of denial of license or any part thereof is necessary to determine whether Commission has exceeded its authority. Mississippi Gaming Comm'n v. Board of Educ., 691 So. 2d 452 (Miss. 1997), reh'g denied, 695 So. 2d 601 (Miss. 1997).

§ 75-76-127. Supreme Court review of circuit court decision; availability of judicial review of particular decisions or orders of commission; availability of writs or equitable proceedings.

(1) Any party aggrieved by the final decision in the circuit court after a review of the decision and order of the commission may appeal to the Supreme Court in the manner and within the time provided by law for appeals in civil cases. The Supreme Court shall follow the same procedure thereafter as in appeals in civil actions and may affirm, reverse or modify the decision as the record and law warrant.

(2) The judicial review by the circuit and Supreme Courts afforded in this chapter is the exclusive method of review of the commission's actions, decisions and orders in disciplinary hearings. Judicial review is not available for actions, decisions and orders of the commission relating to the denial of a license or to limited or conditional licenses. Extraordinary common law writs or equitable proceedings are available except where statutory judicial review is made exclusive or is precluded or where the use of those writs or proceedings is precluded by specific statute.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 64, eff from and after passage (approved June 29, 1990).

Cross References — Right of gaming employee whose work permit has been revoked to judicial review in manner prescribed by §§ 75-76-121 through 75-76-127, see § 75-76-137.

JUDICIAL DECISIONS

1. In general.

Mississippi Gaming Commission's denial of preliminary gaming site approval, a licensing decision, was appealable, since judicial review of denial of license or any part thereof is necessary to determine whether Commission has exceeded its authority. Mississippi Gaming Comm'n v. Board of Educ., 691 So. 2d 452 (Miss. 1997), reh'g denied, 695 So. 2d 601 (Miss. 1997).

Despite statute generally allowing appeal of final decisions of Mississippi Gaming Commission (MGC), property owner did not have statutory right to appeal site request denial of MGC that was within its statutory authority; site approval was prerequisite to license, and therefore, owner was in same position of applicant for license, who specifically was precluded from appealing MGC's denial, limiting, conditioning or restricting of a license. Casino Magic Corp. v. Ladner, 666 So. 2d 452 (Miss. 1995).

Supreme Court has judicial review of any action by the Mississippi Gaming Commission that exceeds its statutory authority. Casino Magic Corp. v. Ladner, 666 So. 2d 452 (Miss. 1995).

Court that was without jurisdiction to hear merits of appeal from site request denial of Mississippi Gaming Commission (MGC) was without jurisdiction to hear motion by casino to intervene. Casino Magic Corp. v. Ladner, 666 So. 2d 452 (Miss. 1995).

DEPOSIT OF FEES

SEC.
75-76-129. Deposit of taxes, fees, interest, etc. into General Fund.

§ 75-76-129. Deposit of taxes, fees, interest, etc. into General Fund.

[From and after January 1, 2016, through December 31, 2016, this section shall read as follows:]

On or before the last day of each month, all taxes, fees, interest, penalties, damages, fines or other monies collected by the Department of Revenue during that month under the provisions of this chapter, with the exception of (a) the local government fees imposed under Section 75-76-195, (b) an amount equal to Three Million Dollars ($3,000,000.00) shall be paid by the Department of Revenue to the State Treasurer to be deposited in the State General Fund. The local government fees shall be distributed by the Department of Revenue pursuant to Section 75-76-197. An amount equal to Two Million Three Hundred Seventy-five Thousand Dollars ($2,375,000.00) of the revenue collected during that month pursuant to the fee imposed under Section 75-76-177(1)(c) shall be deposited by the Department of Revenue into the bond sinking fund created in Section 1(3) of Chapter 479, Laws of 2015. An amount equal to Five Hundred Thousand Dollars ($500,000.00) of the revenue collected during that month pursuant to the fee imposed under Section 75-76-177(1)(c) shall be deposited by the Department of Revenue into the 2015-2016 City of Gulfport Aquarium Construction Fund created in Section 2 of Chapter 479, Laws of 2015. An amount equal to Forty-one Thousand Six Hundred Sixty-Three Dollars ($41,663.00) of the revenue collected during that month pursuant to the fee imposed under Section 75-76-177(1)(c) shall be deposited by the Department of Revenue into the 2015 Vicksburg Interpretive Center, Catfish Row Museum Construction Fund created in Section 3 of Chapter 479, Laws of 2015. An amount equal to Eighty-three Thousand Three Hundred Thirty-four Dollars ($83,334.00) of the revenue collected during that month pursuant to the fee imposed under Section 75-76-177(1)(c) shall be deposited by the Department of Revenue into the 2015 E.E. Bass Cultural Arts Center Fund created in Section 4 of Chapter 479, Laws of 2015.

[From and after January 1, 2017, through December 31, 2017, this section shall read as follows:]

On or before the last day of each month all taxes, fees, interest, penalties, damages, fines or other monies collected by the Department of Revenue during that month under the provisions of this chapter, with the exception of (a) the local government fees imposed under Section 75-76-195, and (b) an amount equal to Three Million Dollars ($3,000,000.00) of the revenue collected pursuant to the fee imposed under Section 75-76-177(1)(c) shall be paid by the Department of Revenue to the State Treasurer to be deposited in the State General Fund. The local government fees shall be distributed by the Department of Revenue pursuant to Section 75-76-197. An amount equal to Two Million Five Hundred Thousand Dollars ($2,500,000.00) of the revenue collected during that month pursuant to the fee imposed under Section 75-76-177(1)(c) shall be deposited by the Department of Revenue into the bond sinking fund created in Section 1(3) of Chapter 479, Laws of 2015. An amount equal to Five Hundred Thousand Dollars ($500,000.00) of the revenue collected during that month pursuant to the fee imposed under Section 75-76-177(1)(c) shall be deposited by the Department of Revenue into the 2015-2016 City of Gulfport Aquarium Construction Fund created in Section 2 of Chapter 479, Laws of 2015.

[From and after January 1, 2018, this section shall read as follows:]

On or before the last day of each month all taxes, fees, interest, penalties, damages, fines or other monies collected by the Department of Revenue during that month under the provisions of this chapter, with the exception of (a) the local government fees imposed under Section 75-76-195, and (b) an amount equal to Three Million Dollars ($3,000,000.00) of the revenue collected pursuant to the fee imposed under Section 75-76-177(1)(c) shall be paid by the Department of Revenue to the State Treasurer to be deposited in the State General Fund. The local government fees shall be distributed by the Department of Revenue pursuant to Section 75-76-197. An amount equal to Three Million Dollars ($3,000,000.00) of the revenue collected during that month pursuant to the fee imposed under Section 75-76-177(1)(c) shall be deposited by the Department of Revenue into the bond sinking fund created in Section 1(3) of Chapter 479, Laws of 2015.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 65; Laws, 1994, ch. 557, § 42; Laws, 1994, ch. 565, § 2; Laws, 1997, ch. 562, § 3; Laws, 2002, ch. 582, § 2; Laws, 2004, ch. 595, § 23; Laws, 2005, 2nd Ex Sess, ch. 53, § 1; Laws, 2015, ch. 479, § 5, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the version of the section effective from and after January 1, 2017, through December 31, 2017, by deleting "shall be distributed by the Department of Revenue pursuant to Section 75-76-197" from the end of the last sentence. The Joint Committee ratified the correction at its August 5, 2016, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference. The reference to "Section 75-65-177 (1)(c)" appearing on the eighth line of the section has been changed to "Section 75-76-177(1)(c)." The Joint Committee ratified the correction at its June 29, 2000, meeting.

Editor's Note — Laws of 2015, ch. 479, § 2, provides:

"SECTION 2. (1) There is created in the State Treasury a special fund to be designated as the '2015-2016 City of Gulfport Aquarium Construction Fund.' The special fund shall consist of monies deposited into the fund under Section 75-76-129 and monies from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used by the

Mississippi Development Authority to assist the City of Gulfport, Mississippi, in paying the costs associated with:

"(a) The construction, furnishing and equipping of an aquarium facility in the City of Gulfport, Mississippi;

"(b) Land acquisition for such facility; and

"(c) Infrastructure related to such facility.

"(2) The Mississippi Development Authority shall have all powers necessary to implement and administer the fund established under this section."

Laws of 2015, ch. 479, § 3, provides:

"SECTION 3. (1) There is created in the State Treasury a special fund to be designated as the '2015 Vicksburg Interpretive Center, Catfish Row Museum Construction Fund.' The special fund shall consist of monies deposited into the fund under Section 75-76-129 and monies from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used by the Department of Finance and Administration to assist the City of Vicksburg, Mississippi, in paying the costs associated with the construction, furnishing and equipping of the Vicksburg Interpretive Center, Catfish Row Museum.

"(2) The Department of Finance and Administration shall have all powers necessary to implement and administer the fund established under this section."

Laws of 2015, ch. 479, § 4, provides:

"SECTION 4. (1) There is created in the State Treasury a special fund to be designated as the '2015 E.E. Bass Cultural Arts Center Fund.' The special fund shall consist of monies deposited into the fund under Section 75-76-129 and monies from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used by the Department of Finance and Administration to assist the City of Greenville, Mississippi, in paying the costs associated with the repair, renovation and refurbishing of the E.E. Bass Cultural Arts Center.

"(2) The Department of Finance and Administration shall have all powers necessary to implement and administer the fund established under this section."

Amendment Notes — The 2015 amendment provided for four versions of the section, and rewrote the section.

WORK PERMITS

Sec.

75-76-131. Executive Director to maintain records on all gaming employees; work permits for gaming employees; denial; appeals; confidentiality of records; expiration of permit; notice.

75-76-133. Communication or document of applicant or licensee absolutely privileged; privileged not waived; disclosure of privileged information prohibited.

75-76-135. Summary suspension of work permit.

75-76-137. Revocation of work permit; grounds; issuance of work permit to person whose permit was revoked or not renewed; judicial review of revocation.

75-76-139. Applicants to make full and true disclosure of all information.

75-76-141. Confidentiality of information relating to termination of gaming employee; exceptions.

§ 75-76-131. Executive Director to maintain records on all gaming employees; work permits for gaming employees; denial; appeals; confidentiality of records; expiration of permit; notice.

(1) The executive director shall:

(a) Ascertain and keep himself informed of the identity, prior activities and present location of all gaming employees in the State of Mississippi; and

(b) Maintain confidential records of such information.

(2) No person may be employed as a gaming employee unless he is the holder of a work permit issued by the commission.

(3) A work permit issued to a gaming employee must have clearly imprinted thereon a statement that it is valid for gaming purposes only.

(4) Application for a work permit is to be made to the executive director and may be granted or denied for any cause deemed reasonable by the commission. Whenever the executive director denies such an application, he shall include in the notice of the denial a statement of the facts upon which he relied in denying the application.

(5) Any person whose application for a work permit has been denied by the executive director may, not later than sixty (60) days after receiving notice of the denial or objection, apply to the commission for a hearing before a hearing examiner. A failure of a person whose application has been denied to apply for a hearing within sixty (60) days or his failure to appear at a hearing conducted pursuant to this section shall be deemed to be an admission that the denial or objection is well founded and precludes administrative or judicial review. At the hearing, the hearing examiner appointed by the commission shall take any testimony deemed necessary. After the hearing the hearing examiner shall within thirty (30) days after the date of the hearing announce his decision sustaining or reversing the denial of the work permit or the objection to the issuance of a work permit. The executive director may refuse to issue a work permit if the applicant has:

(a) Failed to disclose, misstated or otherwise attempted to mislead the commission with respect to any material fact contained in the application for the issuance or renewal of a work permit;

(b) Knowingly failed to comply with the provisions of this chapter or the regulations of the commission at a place of previous employment;

(c) Committed, attempted or conspired to commit any crime of moral turpitude, embezzlement or larceny or any violation of any law pertaining to gaming, or any crime which is inimical to the declared policy of this state concerning gaming;

(d) Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime, or as being of notorious and unsavory reputation;

(e) Been placed and remains in the constructive custody of any federal, state or municipal law enforcement authority;

(f) Had a work permit revoked or committed any act which is a ground for the revocation of a work permit or would have been a ground for revoking his work permit if he had then held a work permit; or

(g) For any other reasonable cause.

The executive director shall refuse to issue a work permit if the applicant has committed, attempted or conspired to commit a crime which is a felony in this state or an offense in another state or jurisdiction which would be a felony if committed in this state.

(6) Any applicant aggrieved by the decision of the hearing examiner may, within fifteen (15) days after the announcement of the decision, apply in writing to the commission for review of the decision. Review is limited to the record of the proceedings before the hearing examiner. The commission may sustain or reverse the hearing examiner's decision. The commission may decline to review the hearing examiner's decision, in which case the hearing examiner's decision becomes the final decision of the commission. The decision of the commission is subject to judicial review.

(7) All records acquired or compiled by the commission relating to any application made pursuant to this section and all lists of persons to whom work permits have been issued or denied and all records of the names or identity of persons engaged in the gaming industry in this state are confidential and must not be disclosed except in the proper administration of this chapter or to an authorized law enforcement agency. Any record of the commission which shows that the applicant has been convicted of a crime in another state must show whether the crime was a misdemeanor, gross misdemeanor, felony or other class of crime as classified by the state in which the crime was committed. In a disclosure of the conviction, reference to the classification of the crime must be based on the classification in the state where it was committed.

(8) A work permit expires unless renewed within ten (10) days after a change of place of employment or if the holder thereof is not employed as a gaming employee within the jurisdiction of the issuing authority for more than ninety (90) days.

(9) Notice of any objection to or denial of a work permit by the executive director as provided pursuant to this section is sufficient if it is mailed to the applicant's last known address as indicated on the application for a work permit. The date of mailing may be proven by a certificate signed by the executive director or his designee that specifies the time the notice was mailed. The notice is presumed to have been received by the applicant five (5) days after it is deposited with the United States Postal Service with the postage thereon prepaid.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 66, eff from and after passage (approved June 29, 1990).

ATTORNEY GENERAL OPINIONS

All gaming employees must obtain work permit from gaming commission; regulation of gaming employees has been preempted by state law, and city does not have authority to enact ordinance requiring gaming employees to obtain work permit from city. Hewes, Sept. 16, 1992, A.G. Op. #92-0686.

Gaming Control Act does not prohibit employment of convicted felons in positions not requiring work permit; such positions are limited to those indirectly related to operation of gaming establishment, such as valet parking attendants, maintenance, and kitchen staff. Stewart, Oct. 15, 1992, A.G. Op. #92-0778.

Miss. Code Section 75-76-131(2) requires all "gaming employees" to hold work permits issued by Mississippi Gaming Commission. McAdams, May 5, 1993, A.G. Op. #93-0327.

§ 75-76-133. Communication or document of applicant or licensee absolutely privileged; privileged not waived; disclosure of privileged information prohibited.

(1) Any communication or document of an applicant or licensee which is required by:

(a) Law or the regulations of the commission; or

(b) A subpoena issued by the commission to be made or transmitted to the commission or the executive director or his employees,

is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

(2) If such a document or communication contains any information which is privileged, that privilege is not waived or lost because the document or communication is disclosed to the commission or the executive director or his employees.

(3) Notwithstanding the powers granted to the commission and the executive director by this chapter:

(a) The commission, the executive director and his employees shall not release or disclose any privileged information, documents or communications provided by an applicant without the prior written consent of the applicant or licensee or pursuant to a lawful court order after timely notice of the proceedings has been given to the applicant or licensee.

(b) The commission and the executive director shall maintain all privileged information, documents and communications in a secure place accessible only to members of the commission and the executive director and his employees.

(c) The commission shall adopt procedures and regulations to protect the privileged nature of information, documents and communications provided by an applicant or licensee.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 67, eff from and after passage (approved June 29, 1990).

RESEARCH REFERENCES

ALR. Waiver of evidentiary privilege by inadvertent disclosure—state law. 51 A.L.R.5th 603.

§ 75-76-135. Summary suspension of work permit.

(1) The commission may issue an order summarily suspending a person's work permit upon a finding that the suspension is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare. The order becomes effective when served upon the permit holder.

(2) The order of summary suspension must state the facts upon which the finding of necessity for the suspension is based. For purposes of this section, the order shall be deemed a complaint.

(3) An order of summary suspension must be signed by at least two (2) members of the commission.

(4) The person whose work permit is summarily suspended:

(a) Has a right to a hearing on the order. The commission shall schedule a hearing within five (5) days after receipt of the person's notice of defense.

(b) Must file a notice of defense within thirty (30) days after the effective date of the emergency order. Failure to timely file this notice waives his rights to a hearing before the commission and to judicial review of the final decision.

(5) All affirmative defenses must be specifically stated in the notice of defense, and unless an objection is stated to the form or manner of the order, all objections to the form of the complaint shall be deemed waived.

(6) Except as otherwise provided in this section, the procedures for a disciplinary action in Sections 75-76-103 through 75-76-119, inclusive, must be followed.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 68, eff from and after passage (approved June 29, 1990).

§ 75-76-137. Revocation of work permit; grounds; issuance of work permit to person whose permit was revoked or not renewed; judicial review of revocation.

(1) If any gaming employee is convicted of any violation of this chapter or if in investigating an alleged violation of this chapter by any licensee the executive director or the commission finds that a gaming employee employed by the licensee has been guilty of cheating, the commission shall, after a hearing as provided in Sections 75-76-103 through 75-76-119, inclusive, revoke the employee's work permit.

(2) The commission may revoke a work permit if it finds after a hearing as provided in Sections 75-76-103 through 75-76-119, inclusive, that the gaming employee has failed to disclose, misstated or otherwise misled the commission with respect to any fact contained within any application for a work permit, or subsequent to being issued a work permit:

(a) Committed, attempted or conspired to do any of the acts prohibited by this chapter;

(b) Knowingly possessed or permitted to remain in or upon any licensed premises any cards, dice, mechanical device or any other cheating device whatever the use of which is prohibited by statute or ordinance;

(c) Concealed or refused to disclose any material fact in any investigation by the executive director or the commission;

(d) Committed, attempted or conspired to commit larceny or embezzlement against a gaming licensee or upon the premises of a licensed gaming establishment;

(e) Been convicted in any jurisdiction other than Mississippi of any offense involving or relating to gambling;

(f) Accepted employment without prior commission approval in a position for which he could be required to be licensed under this chapter after having been denied a license for a reason involving personal unsuitability or after failing to apply for licensing when requested to do so by the commission or the executive director;

(g) Been refused the issuance of any license, permit or approval to engage in or be involved with gaming in any jurisdiction other than Mississippi, or had any such license, permit or approval revoked or suspended;

(h) Been prohibited under color of governmental authority from being present upon the premises of any gaming establishment for any reason relating to improper gambling activities or any illegal act;

(i) Contumaciously defied any legislative investigative committee or other officially constituted bodies acting on behalf of the United States or any state, county or municipality which seeks to investigate crimes relating to gaming, corruption of public officials, or any organized criminal activities; or

(j) Been convicted of any felony or misdemeanor, other than one constituting a violation of this chapter.

(3) A work permit shall not be issued to a person whose work permit has previously been revoked pursuant to this section or to whom the issuance or renewal of a work permit has been denied, except with the unanimous approval of the commission members.

(4) A gaming employee whose work permit has been revoked pursuant to this section is entitled to judicial review of the commission's action in the manner prescribed by Sections 75-76-121 through 75-76-127, inclusive.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 69, eff from and after passage (approved June 29, 1990).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (b) of subsection (2). The word "statue" was changed to "statute." The Joint Committee ratified the correction at its May 20, 1998, meeting.

§ 75-76-139. Applicants to make full and true disclosure of all information.

An applicant for licensing, registration, finding of suitability, work permit or any approval or consent required by this chapter shall make full and true disclosure of all information to the commission, the executive director and any other relevant governmental authority as necessary or appropriate in the public interest or as required in order to carry out the policies of this state relating to licensing and control of the gaming industry.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 70, eff from and after passage (approved June 29, 1990).

§ 75-76-141. Confidentiality of information relating to termination of gaming employee; exceptions.

Any information obtained by the executive director or the commission from any licensee, his employer or agent relating to the termination of a gaming employee is confidential and must not be disclosed except:

(a) Such information obtained from the former employer of an applicant for a work permit must be disclosed to the applicant to the extent necessary to permit him to respond to any objection made by the executive director to his application for the permit;

(b) In the necessary administration of this chapter; or

(c) Upon the lawful order of a court of competent jurisdiction.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 71, eff from and after passage (approved June 29, 1990).

RESPONSIBILITY FOR CERTAIN FEES

SEC.
75-76-143. Provision regarding responsibility for fees and taxes required in certain contracts.

§ 75-76-143. Provision regarding responsibility for fees and taxes required in certain contracts.

When any person contracts to sell or lease any property or interest in property, real or personal, under circumstances which require the approval or licensing of the purchaser or lessee by the commission, the contract must contain a provision satisfactory to the commission regarding responsibility for the payment of any fees or taxes due pursuant to any subsequent deficiency determinations made under this chapter which encompass any period of time before the closing date of the transaction.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 72, eff from and after passage (approved June 29, 1990).

ENFORCEMENT OF GAMING CONTROL ACT

SEC.
75-76-145. Civil actions to restrain violations of Gaming Control Act.
75-76-147. Proceedings or actions to enforce provisions of Gaming Control Act and Section 97-19-55 under certain circumstances; referral of matter to district attorney or Attorney General.
75-76-149. Penalty for possession of device, equipment or material manufactured, sold or distributed in violation of Gaming Control Act.
75-76-151. Law enforcement divisions to furnish all information obtained during investigation or prosecution of violations of laws related to gaming.
75-76-153. Motion for release of confidential information.

§ 75-76-145. Civil actions to restrain violations of Gaming Control Act.

(1) The Attorney General, at the request of the executive director or the commission, may institute a civil action in any court of this state against any person subject to this chapter, to restrain a violation of this chapter.

(2) The court shall give priority over other civil actions to an action brought pursuant to this section.

(3) An action brought against a person pursuant to this section shall not preclude a criminal action or administrative proceeding against that person.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 73, eff from and after passage (approved June 29, 1990).

§ 75-76-147. Proceedings or actions to enforce provisions of Gaming Control Act and Section 97-19-55 under certain circumstances; referral of matter to district attorney or Attorney General.

(1) The commission or the executive director shall initiate proceedings or actions appropriate to enforce the provisions of this chapter and may recommend that a district attorney or the Attorney General prosecute any public offense committed in violation of any provision of this chapter, or in violation of Section 97-19-55 when the offense involves the use of a casino marker issued to a licensed gaming establishment.

(2) If an investigation indicates probable cause for belief that a violation of this chapter, or a violation of Section 97-19-55 when the offense involves the use of a casino marker issued to a licensed gaming establishment, has occurred, the commission or the executive director shall refer the matter and the evidence gathered during the investigation to the district attorney having jurisdiction, with a request that such violation be prosecuted (a) by presentation to the grand jury if it appears that a felony violation has occurred, or (b) either by presentation to the grand jury or by filing a criminal affidavit if it appears that a misdemeanor violation has occurred.

(3) If a district attorney declines to prosecute an offense referred to him by the commission or the executive director, he shall respond in writing to the

commission or the executive director within sixty (60) days following receipt of the request to prosecute and state the reasons declining to prosecute.

(4) If the commission or the executive director, after reviewing a district attorney's declination to prosecute, disagrees with the decision of such district attorney, the commission or the executive director may then refer the request for criminal prosecution to the Attorney General. In conducting any such prosecution, the Attorney General shall have all powers of a district attorney, including the power to issue or cause to be issued subpoenas or other process, and the right to enter the grand jury room while the grand jury is in session and to perform services with reference to the work of the grand jury.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 74; Laws, 2009, ch. 454, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2) by substituting "or a violation of Section 97-19-55" for "or in violation of Section 97-19-55." The Joint Committee ratified the correction at its July 22, 2010, meeting.

RESEARCH REFERENCES

ALR. Admissibility, in prosecution for gambling or gambling offense, of evidence of other acts of gambling. 64 A.L.R.2d 823.

Validity, construction, and application of statutes or ordinances involved in prosecutions for possession of bookmaking paraphernalia. 51 A.L.R.4th 796.

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of wagers or wagering information related to bookmaking. 53 A.L.R.4th 801.

Am Jur. 38 Am. Jur. 2d, Gambling § 107 et seq.

CJS. 38 C.J.S., Gaming § 131 et seq.

§ 75-76-149. Penalty for possession of device, equipment or material manufactured, sold or distributed in violation of Gaming Control Act.

Any person who possesses any device, equipment or material which has been manufactured, sold or distributed in violation of this chapter shall, upon conviction, be punished by a fine of not more than One Thousand Dollars ($1,000.00) or imprisoned in the county jail not more than six (6) months, or by both such fine and imprisonment.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 75, eff from and after passage (approved June 29, 1990).

RESEARCH REFERENCES

ALR. Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statutes or ordinance. 1 A.L.R.3d 726.

Constitutionality of statutes providing for destruction of gambling devices. 14 A.L.R.3d 366.

Validity of criminal legislation making possession of gambling or lottery devices or paraphernalia presumptive or prima facie evidence of other incriminating facts. 17 A.L.R.3d 491.

Validity, construction, and application of statutes or ordinances involved in prosecutions for possession of bookmaking paraphernalia. 51 A.L.R.4th 796.

What constitutes gambling device within meaning of 15 USCS § 1171(a) so as to be subject to forfeiture under Gambling Devices Act of 1962 (15 USCS §§ 1171-1178). 83 A.L.R. Fed. 177.

Am Jur. 38 Am. Jur. 2d, Gambling § 64 et seq.

Lawyers' Edition. Validity and construction of federal statute (18 USCS § 1953) dealing with interstate transportation of wagering paraphernalia—federal cases. 17 L. Ed. 2d 984.

§ 75-76-151. Law enforcement divisions to furnish all information obtained during investigation or prosecution of violations of laws related to gaming.

Every district attorney, sheriff and chief of police shall furnish to the executive director, on forms prepared by the executive director, all information obtained during the course of any substantial investigation or prosecution of any person if it appears that a violation of any law related to gaming has occurred.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 76, eff from and after passage (approved June 29, 1990).

§ 75-76-153. Motion for release of confidential information.

An application to a court for an order requiring the commission or the executive director to release any information declared by law to be confidential shall be made only upon motion in writing on ten (10) days' written notice to the commission or the executive director, the Attorney General and all persons who may be affected by the entry of such order. Copies of the motion and all papers filed in support of it shall be served with the notice by delivering a copy in person or by certified mail to the last known address of the person to be served.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 77, eff from and after passage (approved June 29, 1990).

AGE REQUIREMENTS

Sec.
75-76-155. Age requirement for patrons and gaming employees; penalties for violations; belief as to person's age no excuse.

§ 75-76-155. Age requirement for patrons and gaming employees; penalties for violations; belief as to person's age no excuse.

(1) A person under the age of twenty-one (21) years shall not:

(a) Play, be allowed to play, place wagers, or collect winnings, whether personally or through an agent, from any gaming authorized under this chapter.

(b) Be employed as a gaming employee.

(2) Any licensee, employee, dealer or other person who violates or permits the violation of any of the provisions of this section, and any person under twenty-one (21) years of age who violates any of the provisions of this section shall, upon conviction, be punished by a fine of not more than One Thousand Dollars ($1,000.00) or imprisoned in the county jail not more than six (6) months, or by both such fine and imprisonment.

(3) In any prosecution or other proceeding for the violation of any of the provisions of this section, it is no excuse for the licensee, employee, dealer or other person to plead that he believed the person to be twenty-one (21) years old or over.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 78, eff from and after passage (approved June 29, 1990).

ENFORCEMENT OF GAMING DEBTS NOT EVIDENCED BY CREDIT INSTRUMENT

SEC.

75-76-157. Gaming debts not evidenced by credit instrument not enforceable; resolution of certain claims or disputes between licensee and patron associated with promotional activities.
75-76-159. Resolution of claim by patron for payment of gaming debt not evidenced by credit instrument; investigation and decision of executive director.
75-76-161. Resolution of claim by patron; appeal of decision of executive director to commission; hearing.
75-76-163. Resolution of claim by patron; burden of proof at hearing; decision of hearing examiner.
75-76-165. Resolution of claim by patron; payment of claim; deposit of amount of claim upon judicial appeal by licensee; withdraw by licensee of amount deposited.
75-76-167. Resolution of claim by patron; judicial review of decision of commission; petition for review.
75-76-169. Resolution of claim by patron; judicial review; record on review.
75-76-171. Resolution of claim by patron; judicial review; taking of additional evidence; standard of review; grounds for reversal of decision of commission.
75-76-173. Resolution of claim by patron; judicial review; appeal to Supreme Court of decision of circuit court; judicial review provided as exclusive method of review; costs of record on review.
75-76-175. Acceptance of credit instruments by licenses.

§ 75-76-157. Gaming debts not evidenced by credit instrument not enforceable; resolution of certain claims or disputes between licensee and patron associated with promotional activities.

(1) Except as provided in Sections 75-76-159 through 75-76-165, inclusive, gaming debts not evidenced by a credit instrument are void and unenforceable and do not give rise to any administrative or civil cause of action.

(2) A claim by a patron of a licensee for payment of a gaming debt not evidenced by a credit instrument, and a dispute between a licensee and a patron associated with a promotional activity as defined in Section 75-76-5(nn), shall be resolved by the executive director in accordance with Sections 75-76-159 through 75-76-165, inclusive. The resolution of such a claim or dispute by the executive director shall include any claims for alleged winnings or losses, or the award or distribution of cash, prizes, benefits, tickets or any other item of value associated with the promotional activity, or the manner in which the specific event at which the award or distribution from the promotional activity is conducted; however, the authority granted under this subsection (2) regarding a promotional activity does not provide the executive director or the commission with any additional authority, not otherwise granted by law, to regulate the promotional activity with regard to those matters pertaining exclusively to the operational or administrative aspects of the promotional activity that occur in advance of such specific event at which the award or distribution is conducted.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 79; Laws, 2009, ch. 384, § 1; Laws, 2010, ch. 431, § 9, eff from and after passage (approved Mar. 24, 2010.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in subsection (2) by substituting "Section 75-76-5(nn)" for "Section 75-76-5(mm)." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Cross References — Promotional activity defined, see § 75-76-5.

Disputes over winnings from fantasy contests under §§ 97-33-301 through 97-33-315 to be resolved under procedures set forth in §§ 75-76-157 through 75-76-173, see § 97-33-313.

JUDICIAL DECISIONS

1. In general.
2. Jurisdiction.

1. In general.

Gaming Commission did not have jurisdiction over a dispute involving a casino's promotional drawing because the drawing was not a "game" as defined by the Gaming Control Act, for: (1) although the number of entries for the drawing was based upon the amount of play at the casino, the drawing tickets themselves cost nothing and were given to players simply upon showing valid ID; and (2) the drawing was not played with cards, dice, or any gambling device. Ameristar Casino Vicksburg, Inc. v. Duckworth, 990 So. 2d 758 (Miss. 2008).

The Gaming Commission had exclusive jurisdiction over an action alleging that the plaintiff was due additional winnings from a casino because, even though he wanted to bet $20,000 per hand in a series of mini-baccarat games, casino personnel would only let him bet $5000 at a time since (1) although the plaintiff asserted that his claim was based on common law tort or contracts, such claims based on gambling were barred at common law, and (2) the claim fell squarely within the statutory definitions of a "gaming debt" and "alleged winnings." Grand Casino Tunica v. Shindler, 772 So. 2d 1036 (Miss. 2000).

Slot machine player's failure to petition executive director of Gaming Commission for reconsideration of her dispute with licensee casino regarding payment of jackpot in annual installments deprived circuit court of jurisdiction to hear her complaint. Cook v. Mardi Gras Casino Corp., 697 So. 2d 378 (Miss. 1997).

2. Jurisdiction.

In a case in which a gambler alleged that a county, a deputy sheriff, a casino company, and a casino exercised dominion and control over his property, i.e., the money that was represented by the casino chips he undisputedly won, which were inconsistent with his ownership rights because they would not cash in his chips unless and until he handed over his drivers license to the casino, his trespass to chattels and conversion claims were not within the exclusive jurisdiction of the Mississippi Gaming Commission pursuant to Miss. Code Ann. §§ 75-76-103 and 75-76-157(2). The gambler alleged that he never agreed to hand over his ID to the casino and they would not have received and copied it but for the actions of the county sheriff's department taking his ID from him. Grosch v. Tunica County, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 89364 (N.D. Miss. July 2, 2008).

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gambling § 150 et seq.

CJS. 38 C.J.S., Gaming §§ 68, 72 et seq.

§ 75-76-159. Resolution of claim by patron for payment of gaming debt not evidenced by credit instrument; investigation and decision of executive director.

(1) Whenever a licensee refuses payment of alleged winnings to a patron, the licensee and the patron are unable to resolve the dispute to the satisfaction of the patron and the dispute involves:

(a) At least Five Hundred Dollars ($500.00), the licensee shall immediately notify the executive director; or

(b) Less than Five Hundred Dollars ($500.00), the licensee shall inform the patron of his right to request that the executive director conduct an investigation.

The executive director shall conduct whatever investigation is deemed necessary and shall determine whether payment should be made.

(2) The executive director shall mail written notice to the commission, the licensee and the patron of his decision resolving the dispute within thirty (30) days after the date the executive director first receives notification from the licensee or a request to conduct an investigation from the patron.

(3) Failure to notify the executive director or patron as provided in subsection (1) is grounds for disciplinary action pursuant to Sections 75-76-103 through 75-76-119, inclusive.

(4) The decision of the executive director is effective on the date the aggrieved party receives notice of the decision. The date of receipt is presumed to be the date specified on the return receipt.

(5) Notice of the decision of the executive director shall be deemed sufficient if it is mailed to the last known address of the licensee and patron. The date of mailing may be proven by a certificate signed by an employee of the executive director that specifies the time the notice was mailed. The notice is presumed to have been received by the licensee or the patron five (5) days after it is deposited with the United States Postal Service with the postage thereon prepaid.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 80, eff from and after passage (approved June 29, 1990).

Cross References — Gaming debt not evidenced by credit instrument unenforceable, except as provided in §§ 75-76-159 through 75-76-165, see § 75-76-157.

Right of any person aggrieved by decision or order of commission made after a hearing pursuant to §§ 75-76-159 through 75-76-165 to judicial review of such decision or order, see § 75-76-167.

Judicial review by circuit and Supreme Courts as exclusive method of review of commission actions, decisions and orders in hearings held pursuant to §§ 75-76-159 through 75-76-165, see § 75-76-173.

Disputes over winnings from fantasy contests under §§ 97-33-301 through 97-33-315 to be resolved under procedures set forth in §§ 75-76-157 through 75-76-173, see § 97-33-313.

JUDICIAL DECISIONS

1. In general.
2. Administrative remedies.

1. In general.

Gaming Commissioner's failure to issue decision on jackpot winner's complaint against licensee casino within 30 days as required by statute did not waive statutory exhaustion requirement that motion for reconsideration be filed before judicial review was sought where statute did not impose any consequence for noncompliance. Cook v. Mardi Gras Casino Corp., 697 So. 2d 378 (Miss. 1997).

Statutory time limit for action by Gaming Commission on complaint of patron of licensee is merely directory rather than mandatory and any failure by Commission to reach decision within that time frame does not divest Commission entirely of its exclusive jurisdiction over claim. Cook v. Mardi Gras Casino Corp., 697 So. 2d 378 (Miss. 1997).

Decision on patron's complaint against licensee casino was not rendered invalid by fact that it was issued by deputy director, who was also interim executive director of Gaming Commission, rather than regularly appointed director. Cook v. Mardi Gras Casino Corp., 697 So. 2d 378 (Miss. 1997).

Mailing notice of Gaming Commission's decision to only patron's attorney did not excuse patron's failure to move for reconsideration of case; failure to mail notice by registered or certified mail was harmless where it was undisputed that patron's attorney actually received notice. Cook v. Mardi Gras Casino Corp., 697 So. 2d 378 (Miss. 1997).

2. Administrative remedies.

Dismissal of the claimant's action against the casino was affirmed because the claimant failed to exhaust his administrative remedies under the Mississippi Gaming Control Act, Miss. Code Ann. § 75-76-1 through 75-76-313, before filing his suit in with the circuit court; since the claimant first sought recourse with the Mississippi Gaming Commission (MGC), he became subject to the dictates of the Act, and failed to file a petition with the MGC requesting a hearing to reconsider the decision that the casino drawings were in accordance with the Mississippi Gaming Commission rules and regulations. Burse v. Harrah's Vicksburg Corp., 919 So. 2d 1014 (Miss. Ct. App. 2005).

§ 75-76-161. Resolution of claim by patron; appeal of decision of executive director to commission; hearing.

(1) Within twenty (20) days after the date of receipt of the written decision of the executive director, the aggrieved party may file a petition with the commission requesting a hearing to reconsider the decision.

(2) The petition must set forth the basis of the request for reconsideration.

(3) If no petition for reconsideration is filed within the time prescribed in subsection (1) of this section, the decision shall be deemed final action on the matter and is not subject to reconsideration by the executive director or review by the commission or to review by any court.

(4) The party requesting the hearing must provide a copy of the petition to the other party.

(5) Within fifteen (15) days after service of the petition, the responding party may answer the allegations contained therein by filing a written response with the commission.

(6) The commission shall appoint a hearing examiner who shall schedule a hearing and may conduct the hearing at such times and places, within or without the State of Mississippi as may be convenient, except that notice of the date, time and place of the hearing must be provided to both parties. The commission may review the hearing examiner's decision as provided in Section 75-76-119.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 81, eff from and after passage (approved June 29, 1990).

Cross References — Gaming debt not evidenced by credit instrument unenforceable, except as provided in §§ 75-76-159 through 75-76-165, see § 75-76-157.

Right of any person aggrieved by decision or order of commission made after a hearing pursuant to §§ 75-76-159 through 75-76-165 to judicial review of such decision or order, see § 75-76-167.

Judicial review by circuit and Supreme Courts as exclusive method of review of commission actions, decisions and orders in hearings held pursuant to §§ 75-76-159 through 75-76-165, see § 75-76-173.

Disputes over winnings from fantasy contests under §§ 97-33-301 through 97-33-315 to be resolved under procedures set forth in §§ 75-76-157 through 75-76-173, see § 97-33-313.

JUDICIAL DECISIONS

1. In general.
2. Administrative remedies.

1. In general.

Slot machine player's failure to petition executive director of Gaming Commission for reconsideration of her dispute with licensee casino regarding payment of jackpot in annual installments deprived circuit court of jurisdiction to hear her complaint. Cook v. Mardi Gras Casino Corp., 697 So. 2d 378 (Miss. 1997).

2. Administrative remedies.

Dismissal of the claimant's action against the casino was affirmed because the claimant failed to exhaust his administrative remedies under the Mississippi Gaming Control Act, Miss. Code Ann. §§ 75-76-1 through 75-76-313, before filing his suit in with the circuit court; since the claimant first sought recourse with the Mississippi Gaming Commission (MGC), he became subject to the dictates of the Act, and failed to file a petition with the MGC requesting a hearing to reconsider the decision that the casino drawings were in accordance with the Mississippi Gaming Commission rules and regulations. Burse v. Harrah's Vicksburg Corp., 919 So. 2d 1014 (Miss. Ct. App. 2005).

§ 75-76-163. Resolution of claim by patron; burden of proof at hearing; decision of hearing examiner.

(1) The party seeking reconsideration bears the burden of showing that the executive director's decision should be reversed or modified.

(2) After the hearing, the hearing examiner may sustain, modify or reverse the executive director's decision. The decision by the hearing examiner must be in writing and must include findings of fact. A copy of the hearing examiner's decision must be delivered or mailed forthwith to each party or to his attorney of record.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 82, eff from and after passage (approved June 29, 1990).

Cross References — Gaming debt not evidenced by credit instrument unenforceable, except as provided in §§ 75-76-159 through 75-76-165, see § 75-76-157.

Right of any person aggrieved by decision or order of commission made after a hearing pursuant to §§ 75-76-159 through 75-76-165 to judicial review of such decision or order, see § 75-76-167.

Judicial review by circuit and Supreme Courts as exclusive method of review of commission actions, decisions and orders in hearings held pursuant to §§ 75-76-159 through 75-76-165, see § 75-76-173.

Disputes over winnings from fantasy contests under §§ 97-33-301 through 97-33-315 to be resolved under procedures set forth in §§ 75-76-157 through 75-76-173, see § 97-33-313.

§ 75-76-165. Resolution of claim by patron; payment of claim; deposit of amount of claim upon judicial appeal by licensee; withdraw by licensee of amount deposited.

(1) Except as otherwise provided in subsection (2) of this section, a licensee shall pay a patron's claim within twenty (20) days after the decision of the executive director directing him to do so becomes final. Failure to pay

within that time is grounds for disciplinary action pursuant to Sections 75-76-103 through 75-76-119, inclusive.

(2) If a licensee intends to file a petition for judicial review of the commission's decision pursuant to Sections 75-76-167 through 75-76-173, inclusive, the licensee must first deposit in an interest-bearing account in a financial institution an amount equal to the amount in dispute. The licensee shall pay the full amount of the patron's claim, including interest, within twenty (20) days after a final, nonappealable order of a court of competent jurisdiction so directs.

(3) The licensee may withdraw the amount deposited in the financial institution upon:

(a) Payment of the full amount of the patron's claim, plus interest, if the licensee has given notice to the commission of the payment; or

(b) A final determination by the court that the licensee is not required to pay the claim.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 83, eff from and after passage (approved June 29, 1990).

Cross References — Gaming debt not evidenced by credit instrument unenforceable, except as provided in §§ 75-76-159 through 75-76-165, see § 75-76-157.

Right of any person aggrieved by decision or order of commission made after a hearing pursuant to §§ 75-76-159 through 75-76-165 to judicial review of such decision or order, see § 75-76-167.

Judicial review by circuit and Supreme Courts as exclusive method of review of commission actions, decisions and orders in hearings held pursuant to §§ 75-76-159 through 75-76-165, see § 75-76-173.

Disputes over winnings from fantasy contests under §§ 97-33-301 through 97-33-315 to be resolved under procedures set forth in §§ 75-76-157 through 75-76-173, see § 97-33-313.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 75-76-165 did not transform the jackpot winner's jackpot of twenty periodic payments into a single, lump-sum payment; rather, the statute provides that the winner must be paid the "claim," i.e. the legitimate winner's claim, with interest, within twenty days of a nonappealable order from the appellate court, and that the claim would be paid in 20 equal annual installments. Kelly v. Int'l Games Tech., 874 So. 2d 977 (Miss. 2004).

§ 75-76-167. Resolution of claim by patron; judicial review of decision of commission; petition for review.

(1) Any person aggrieved by a final decision or order of the commission made after hearing by the commission pursuant to Sections 75-76-159 through 75-76-165, inclusive, may obtain a judicial review thereof in the circuit court of the county in which the dispute between the licensee and patron arose.

(2) The judicial review must be instituted by filing a petition within twenty (20) days after the effective date of the final decision or order. The

petition must set forth the order or decision appealed from and the grounds or reasons why petitioner contends a reversal or modification should be ordered.

(3) Copies of the petition must be served upon the executive director and all other parties of record, or their counsel of record, either personally or by certified mail.

(4) The court, upon a proper showing, may permit other interested persons to intervene as parties to the appeal or as friends of the court.

(5) The filing of the petition does not stay enforcement of the decision or order of the commission, but the commission itself may grant a stay upon such terms and conditions as it deems proper.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 85, eff from and after passage (approved June 29, 1990).

Cross References — Requirement that licensee deposit amount in dispute in order to file for judicial review of decision in favor of patron's claim for winnings, see § 75-76-165.

Disputes over winnings from fantasy contests under §§ 97-33-301 through 97-33-315 to be resolved under procedures set forth in §§ 75-76-157 through 75-76-173, see § 97-33-313.

JUDICIAL DECISIONS

1. Judicial review.

Regardless of whether the statute confers jurisdiction or connotes venue, the proper course of action when a Gaming Commission decision is appealed to the wrong court is to transfer the action to the proper court since, otherwise, a claim could be inadvertently filed in the wrong court, subsequently dismissed, and then time-barred in the proper court. Thomas v. Isle of Capri Casino, 781 So. 2d 125 (Miss. 2001).

§ 75-76-169. Resolution of claim by patron; judicial review; record on review.

(1) Upon written request of petitioner and upon payment of such reasonable costs and fees as the commission may prescribe, the complete record on review, or such parts thereof as are designated by the petitioner, must be prepared by the commission.

(2) The complete record on review must include copies of:

(a) All pleadings in the case;

(b) All notices and interim orders issued by the hearing examiner or the commission in connection with the case;

(c) All stipulations;

(d) The decision and order appealed from;

(e) A transcript of all testimony, evidence and proceedings at the hearing;

(f) The exhibits admitted or rejected; and

(g) Any other papers in the case.

The original of any document may be used in lieu of a copy thereof. The record on review may be shortened by stipulation of all parties to the review proceedings.

(3) The record on review must be filed with the reviewing court within thirty (30) days after service of the petition for review, but the court may allow the commission additional time to prepare and transmit the record on review.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 86, eff from and after passage (approved June 29, 1990).

Cross References — Requirement that licensee deposit amount in dispute in order to file for judicial review of decision in favor of patron's claim for winnings, see § 75-76-165.

Disputes over winnings from fantasy contests under §§ 97-33-301 through 97-33-315 to be resolved under procedures set forth in §§ 75-76-157 through 75-76-173, see § 97-33-313.

§ 75-76-171. Resolution of claim by patron; judicial review; taking of additional evidence; standard of review; grounds for reversal of decision of commission.

(1) The reviewing court may, upon motion therefor, order that additional evidence in the case be taken by the commission upon such terms and conditions as the court may deem just and proper. The motion must not be granted except upon a showing that the additional evidence is material and necessary and that sufficient reason existed for failure to present the evidence at the hearing before the hearing examiner or the commission. The motion must be supported by an affidavit of the moving party or his counsel showing with particularity the materiality and necessity of the additional evidence and the reason why it was not introduced in the administrative hearing. Rebuttal evidence to the additional evidence must be permitted. In cases in which additional evidence is presented to the commission, the commission may modify its decisions and orders as the additional evidence may warrant and shall file with the reviewing court a transcript of the additional evidence together with any modifications of the decision and order, all of which become a part of the record on review.

(2) The review must be conducted by the court sitting without a jury and must not be a trial de novo but is confined to the record on review.

(3) The reviewing court may affirm the decision and order of the commission, or it may remand the case for further proceedings or reverse the decision if the substantial rights of the petitioner have been prejudiced because the decision is:

(a) In violation of constitutional provisions;

(b) In excess of the statutory authority or jurisdiction of the commission;

(c) Made upon unlawful procedure;

(d) Unsupported by any evidence; or

(e) Arbitrary or capricious or otherwise not in accordance with law.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 87, eff from and after passage (approved June 29, 1990).

Cross References — Requirement that licensee deposit amount in dispute in order to file for judicial review of decision in favor of patron's claim for winnings, see § 75-76-165.

Disputes over winnings from fantasy contests under §§ 97-33-301 through 97-33-315 to be resolved under procedures set forth in §§ 75-76-157 through 75-76-173, see § 97-33-313.

JUDICIAL DECISIONS

1. Standard of review.
2. Violation of substantial rights.
3. Unsupported by evidence.

1. Standard of review.

The proper standard of review in casino patron disputes is the unsupported by any evidence standard of review, rather than the substantial evidence standard. Mississippi Gaming Comm'n v. Freeman, 747 So. 2d 231 (Miss. 1999).

2. Violation of substantial rights.

Trial court's reversal of the Mississippi Gaming Commission's award in favor of a patron and against the casino was proper under Miss. Code Ann. § 75-76-171(3) because the patron's award was determined by the combination resulting from her play, and not the secondary indicators activated by the play. There was no indication from anything on the slot machine before the patron began playing showing that she could win anything more than $ 8,000 with three double diamonds lined up on the pay line. Eash v. Imperial Palace of Miss., LLC, 4 So. 3d 1042 (Miss. 2009).

Where a casino failed to immediately contact the Mississippi Gaming Commission about a payout dispute, manipulated the slot machine, and destroyed evidence, it violated the patron's substantial rights under Mississippi gaming laws, and the commission's ruling denying the jackpot to the patron was arbitrary and capricious. Grand Casino Biloxi v. Hallmark, — So. 2d —, 2001 Miss. LEXIS 295 (Miss. Oct. 31, 2001), opinion withdrawn by, substituted opinion at 823 So. 2d 1185, 2002 Miss. LEXIS 265 (Miss. 2002).

In an action alleging that the plaintiff was due additional winnings from a casino because, even though he wanted to bet $20,000 per hand in a series of mini-baccarat games, casino personnel would only let him bet $5000 at a time, the plaintiff was not entitled to reversal of the Gaming Commission's decision for the casino as the decision did not violate any of the principles enumerated in subsection (3). Grand Casino Tunica v. Shindler, 772 So. 2d 1036 (Miss. 2000).

In an action in which a casino patron claimed that she won a jackpot while playing a slot machine, there was no violation of the substantial rights of the plaintiff when the casino failed to notify the executive director that there was a dispute over alleged winnings where the relevant casino employees testified that they thought the plaintiff was satisfied that she did not win the jackpot and that, therefore, no dispute existed. Mississippi Gaming Comm'n v. Freeman, 747 So. 2d 231 (Miss. 1999).

3. Unsupported by evidence.

The evidence was sufficient under the "unsupported by any evidence" standard, Miss. Code Ann. § 75-76-171(3)(d), to deny the claimant the wide area primary progressive jackpot; data extracted from the machine conclusively established the true outcome of the game was Triple Bar-Blank-Blank, a losing combination, and activation of the secondary notification system resulted from an erroneous setting of the progressive bit in the evaluation process. Pickle v. IGT, 830 So. 2d 1214 (Miss. 2002).

§ 75-76-173. Resolution of claim by patron; judicial review; appeal to Supreme Court of decision of circuit court; judicial review provided as exclusive method of review; costs of record on review.

(1) Any party aggrieved by the final decision in the circuit court after a review of the decision and order of the commission may appeal to the Supreme Court in the manner and within the time provided by law for appeals in civil cases. The Supreme Court shall follow the same procedure thereafter as in appeals in civil actions and may affirm, reverse or modify the decision as the record and law warrant.

(2) The judicial review by the circuit and Supreme Courts afforded in this chapter is the exclusive method of review of the commission's actions, decisions and orders in hearings held pursuant to Sections 75-76-159 through 75-76-165, inclusive.

(3) The party requesting judicial review shall bear all of the costs of transcribing and of transmitting the record on review.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 88, eff from and after passage (approved June 29, 1990).

Cross References — Requirement that licensee deposit amount in dispute in order to file for judicial review of decision in favor of patron's claim for winnings, see § 75-76-165.

Disputes over winnings from fantasy contests under §§ 97-33-301 through 97-33-315 to be resolved under procedures set forth in §§ 75-76-157 through 75-76-173, see § 97-33-313.

§ 75-76-175. Acceptance of credit instruments by licenses.

(1) A credit instrument accepted on or after June 29, 1991, is valid and may be enforced by legal process.

(2) A licensee or a person acting on the licensee's behalf may accept an incomplete credit instrument which:

(a) Is signed by a patron; and

(b) States the amount of the debt in figures.

and may complete the instrument as is necessary for the instrument to be presented for payment.

(3) A licensee or person acting on behalf of a licensee:

(a) May accept a credit instrument that is dated later than the date of its execution if that later date is furnished at the time of the execution of the credit instrument by the patron.

(b) May not accept a credit instrument which is incomplete, except as authorized by subsection (2) of this section.

(c) May accept a credit instrument that is payable to an affiliated company or may complete a credit instrument in the name of an affiliated company as payee if the credit instrument otherwise complies with this subsection and the records of the affiliated company pertaining to the credit instrument are made available to the executive director upon request.

(4) This section does not prohibit the establishment of an account by a deposit of cash, recognized traveler's check, or any other instruments which is equivalent to cash.

(5) Any person who violates the provisions of this section is subject only to the penalties provided in Sections 75-76-103 through 75-76-119, inclusive.

(6) The commission may adopt regulations prescribing the conditions under which a credit instrument may be redeemed or presented to a bank for collection or payment.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 89, eff from and after passage (approved June 29, 1990).

RESEARCH REFERENCES

ALR. Right to recover money lent for gambling purposes. 74 A.L.R.5th 369.

FEES

SEC.
75-76-177. License fee based on gross revenues of licensee; penalty for failure to pay fee.
75-76-179. Income tax credit for license fees paid.
75-76-181. Face value of credit instrument included in computation of gross revenue; exceptions; cash received in payment of debt not included in gross revenue.
75-76-183. Application fee and annual license fee for license to conduct gaming aboard cruise vessel.
75-76-185. Imposition of fee based on value of unpaid collectible credit instruments.
75-76-187. Continuing operations and transfer of license; credit for prepaid license fees.
75-76-189. Penalty for failing to pay or evading payment of license fees.
75-76-191. Additional license fee imposed on applicants for state gaming license based on number of games operated.
75-76-193. Calculation of gross revenues; certain expenses not deductible.
75-76-195. License fee based on gross revenues of licensee imposed by municipalities and counties; penalty for failure to pay fee.
75-76-197. Distribution of fees collected under provisions of section 75-76-195.

§ 75-76-177. License fee based on gross revenues of licensee; penalty for failure to pay fee.

(1) From and after August 1, 1990, there is hereby imposed and levied on each gaming licensee a license fee based upon all the gross revenue of the licensee as follows:

(a) Four percent (4%) of all the gross revenue of the licensee which does not exceed Fifty Thousand Dollars ($50,000.00) per calendar month;

(b) Six percent (6%) of all the gross revenue of the licensee which exceeds Fifty Thousand Dollars ($50,000.00) per calendar month and does not exceed One Hundred Thirty-four Thousand Dollars ($134,000.00) per calendar month; and

(c) Eight percent (8%) of all the gross revenue of the licensee which exceeds One Hundred Thirty-four Thousand Dollars ($134,000.00) per calendar month.

(2) All revenue received from any game or gaming device which is leased for operation on the premises of the licensee-owner to a person other than the owner thereof or which is located in an area or space on such premises which is leased by the licensee-owner to any such person, must be attributed to the owner for the purposes of this section and be counted as part of the gross revenue of the owner. The lessee is liable to the owner for his proportionate share of such license fees.

(3) If the amount of license fees required to be reported and paid pursuant to this section is later determined to be greater or less than the amount actually reported and paid by the licensee, the Chairman of the State Tax Commission shall:

(a) Assess and collect the additional license fees determined to be due, with interest thereon until paid; or

(b) Refund any overpayment, with interest thereon, to the licensee.

Interest must be computed, until paid, at the rate of one percent (1%) per month from the first day of the first month following either the due date of the additional license fees or the date of overpayment.

(4) Failure to pay the fees provided for in this section when they are due for continuation of a license shall be deemed a surrender of the license.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 90; Laws, 1997, ch. 562, § 4, eff from and after July 1, 1997.

Editor's Note — Section 27-3-4 provides that the term "Chairman of the State Tax Commission" appearing in the laws of this state shall mean Commissioner of Revenue.

Cross References — Licensee fees paid under this section as credit against income tax liability of licensee, see § 75-76-179.

Application of this section to computation of fee based upon value of unpaid collectible credit instruments, see § 75-76-185.

Treatment of gaming license as transferred and previously licensed operation as continuing operation for purposes of this section, see § 75-76-187.

Additional license fee based upon gross revenues of licensees imposed by municipalities and counties, see § 75-76-195.

§ 75-76-179. Income tax credit for license fees paid.

License fees paid under Section 75-76-177 in any taxable year shall be allowed as credit against the income tax liability of the licensee for that taxable year.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 91, eff from and after passage (approved June 29, 1990).

JUDICIAL DECISIONS

1. In general.

Chancery court did not err in overturning the tax assessment against a corporation because the corporation properly applied gaming license credits to offset its income tax liability of the combined return with its affiliated entities; the phrases "income tax liability" and "tax due" are identical in meaning because both refer to the amount of money that the Mississippi Department of Revenue is entitled to collect from the taxpayer. Miss. Dep't of Revenue v. Isle of Capri Casinos, Inc., 131 So. 3d 1192 (Miss. 2014).

Chancery court did not err in overturning the tax assessment against a corporation because the corporation properly applied gaming license credits to offset its income tax liability of the combined return with its affiliated entities; the limitation the Mississippi Department of Revenue claimed was on the credit had to be determined in reference to the tax liability of the four licensees in the affiliated group, which were allowed to use the credit to offset their income tax liability. Miss. Dep't of Revenue v. Isle of Capri Casinos, Inc., 131 So. 3d 1192 (Miss. 2014).

§ 75-76-181. Face value of credit instrument included in computation of gross revenue; exceptions; cash received in payment of debt not included in gross revenue.

(1) For the purposes of this chapter, except as otherwise provided in subsection (3) of this section, the computation of gross revenue must include the face value of any credit instrument accepted on or after June 29, 1991, if, within five (5) years after the last day of the month following the month in which the instrument was accepted by the licensee, the executive director determines that:

(a) The instrument was not signed by the patron or otherwise acknowledged by him in a written form satisfactory to the executive director;

(b) The licensee did not have an address for the patron at the time of accepting the instrument, or, in lieu of that address, has not provided the executive director, within a reasonable time after its request, the current address of the patron to whom the credit was extended;

(c) The licensee has not provided the executive director any evidence that the licensee made a reasonable effort to collect the debt;

(d) The licensee has not provided the executive director any evidence that the licensee checked the credit history of the patron before extending the credit to him;

(e) The licensee has not produced the instrument within a reasonable time after a request by the executive director for the instrument unless it:

(i) Is in the possession of a court, governmental agency or financial institution;

(ii) Has been returned to the patron upon his partial payment of the instrument and the licensee has obtained a substitute credit instrument for the remaining balance;

(iii) Has been stolen and the licensee has made a written report of the theft to the appropriate law enforcement agency; or

(iv) Cannot be produced because of any other circumstance which is beyond the licensee's control;

(f) The signature of the patron on the instrument was forged and the licensee has not made a written report of the forgery to the appropriate law enforcement agency; or

(g) Upon an audit by the State Tax Commission, the licensee requested the auditors not to confirm the unpaid balance of the debit with the patron and there is no other satisfactory means of confirmation.

(2) For the purpose of this chapter, the computation of gross revenue must not include cash or its equivalent which is received in full or partial payment of a debt previously included in the computation of gross revenue pursuant to subsection (1).

(3) Subsection (1) does not apply to any credit instrument which is settled for less than its face amount to:

(a) Induce a partial payment;

(b) Compromise a dispute;

(c) Retain a patron's business for the future; or

(d) Obtain a patron's business if:

(i) An agreement is entered into to discount the face amount of a credit instrument before it is issued to induce timely payment of the credit instrument; and

(ii) The percentage of discount of the instrument is reasonable as compared to the prevailing practice in the industry.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 92, eff from and after passage (approved June 29, 1990).

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" appearing in the laws of this state in connection with the performance of the duties and functions of the Mississippi State Tax Commission shall mean Department of Revenue.

Cross References — Imposition of fee based upon value of unpaid collectible credit instrument, see § 75-76-185.

Treatment of gaming license as transferred and previously licensed operation as continuing operation for purposes of this section, see § 75-76-187.

§ 75-76-183. Application fee and annual license fee for license to conduct gaming aboard cruise vessel.

(1) Each applicant for a license to conduct gaming aboard a vessel or cruise vessel shall pay an application fee of Five Thousand Dollars ($5,000.00).

(2) Each licensee who is licensed to conduct gaming aboard a vessel or cruise vessel shall pay an annual license fee of Five Thousand Dollars ($5,000.00).

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 93, eff from and after passage (approved June 29, 1990).

Cross References — Provisions governing operation of cruise vessels, see § 27-109-1 et seq.

Treatment of gaming license as transferred and previously licensed operation as continuing operation for purposes of this section, see § 75-76-187.

§ 75-76-185. Imposition of fee based on value of unpaid collectible credit instruments.

(1) Except as otherwise provided in Section 75-76-187, there is hereby imposed and levied on each licensee who conducts a gaming operation a fee based on the value of any collectible credit instrument received as a result of that gaming operation which is held by the licensee or any affiliate of the licensee and remains unpaid on the last tax day.

(2) The fee must be:

(a) Calculated by using the rates and monetary limits set forth in Section 75-76-177; and

(b) Collected by the State Tax Commission and refunded pursuant to the regulations adopted by the State Tax Commission.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 94, eff from and after passage (approved June 29, 1990).

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" appearing in the laws of this state in connection with the performance of the duties and functions of the Mississippi State Tax Commission shall mean Department of Revenue.

Cross References — License fee based on gross revenues to include face value of credit instrument, see § 75-76-181.

Treatment of gaming license as transferred and previously licensed operation as continuing operation for purposes of this section, see § 75-76-187.

§ 75-76-187. Continuing operations and transfer of license; credit for prepaid license fees.

(1) If the commission approves the issuance of a license for gaming operations at the same location, within thirty (30) days following a change described in subsection (2) of this section, for the purpose of Section 75-76-177 and Sections 75-76-181 through 75-76-191, inclusive, the gaming license shall be deemed transferred and the previously licensed operation shall be deemed a continuing operation.

(2) Credit must be granted for prepaid license fees as described in subsection (1) if:

(a) The securities of a corporate gaming licensee are or become publicly held or publicly traded and the gaming operations of that corporation are transferred to a wholly owned subsidiary corporation;

(b) A corporate gaming licensee is merged with another corporation which is the surviving entity and at least eighty percent (80%) of the surviving entity is owned by shareholders of the former licensee;

(c) A corporate gaming licensee is dissolved and the parent corporation of the dissolved corporation or a subsidiary corporation of the parent corporation, at least eighty percent (80%) of which is owned by the parent corporation, becomes the gaming licensee.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 95, eff from and after passage (approved June 29, 1990).

Cross References — Imposition of fee based upon unpaid collectible credit instrument, see § 75-76-185.

Treatment of gaming license as transferred and previously licensed operation as continuing operation for purposes of this section, see § 75-76-187.

§ 75-76-189. Penalty for failing to pay or evading payment of license fees.

Any person who willfully fails to report, pay or truthfully account for and pay over the license fees imposed by this chapter, or willfully attempts in any manner to evade or defeat any such tax or payment thereof, or any licensee who puts additional games into play without authority of the commission to do so or any licensee who fails to remit any license fee provided for by this chapter when due is, in addition to the amount due, liable for a penalty of the amount of the license fee evaded or not paid, collected or paid over. The penalty must be assessed and collected in the same manner as are other charges, license fees and penalties under this chapter.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 96, eff from and after passage (approved June 29, 1990).

Cross References — Treatment of gaming license as transferred and previously licensed operation as continuing operation for purposes of this section, see § 75-76-187.

§ 75-76-191. Additional license fee imposed on applicants for state gaming license based on number of games operated.

(1) In addition to any other state gaming license fees provided for in this chapter, from and after August 1, 1990, there is hereby imposed and levied on each applicant for a state gaming license a license fee to be determined on the basis of the following annual rates:

(a) From establishments operating or to operate ten (10) games or less:

Those establishments operating or to operate one (1) game, the sum of Fifty Dollars ($50.00).

Those establishments operating or to operate two (2) games, the sum of One Hundred Dollars ($100.00).

Those establishments operating or to operate three (3) games, the sum of Two Hundred Dollars ($200.00).

Those establishments operating or to operate four (4) games, the sum of Three Hundred Seventy-five Dollars ($375.00).

Those establishments operating or to operate five (5) games, the sum of Eight Hundred Seventy-five Dollars ($875.00).

Those establishments operating or to operate six (6) or seven (7) games, the sum of One Thousand Five Hundred Dollars ($1,500.00).

Those establishments operating or to operate eight (8), nine (9) or ten (10) games, the sum of Three Thousand Dollars ($3,000.00).

(b) From establishments operating or to operate more than ten (10) games:
For each game up to and including sixteen (16) games, the sum of Five Hundred Dollars ($500.00).
For each game from seventeen (17) to twenty-six (26) games, inclusive, the sum of Four Thousand Eight Hundred Dollars ($4,800.00).
For each game from twenty-seven (27) to thirty-five (35) games, inclusive, the sum of Two Thousand Eight Hundred Dollars ($2,800.00).
For each game more than thirty-five (35) games, the sum of One Hundred Dollars ($100.00).

(2) The license fee imposed by this section is to be paid by the applicant to the State Tax Commission on or before the filing of the application for issuance of a gaming license by the applicant, and is to be paid annually thereafter for continuation of the gaming license. Upon such payment, the Chairman of the State Tax Commission shall certify to the executive director that such fee has been paid by the applicant, and the amount of the fee paid.

(3) Card games, that is, stud or draw poker, bridge, whist, solo, low ball, and panguingui for money, and slot machines, when not utilized as an adjunct to or a unit of any banking, percentage or mechanical device or machine, are not gambling games under the provisions of this section.

(4) All games operated or conducted in one (1) room or a group of rooms in the same or a contiguous building or vessel are considered one (1) operation, and the license to be paid must be determined on the aggregate number of games in each room or group of rooms in the same or a contiguous building or vessel.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 97, eff from and after passage (approved June 29, 1990).

Editor's Note — Section 27-3-4 provides that the terms "State Tax Commission" and "Chairman of the State Tax Commission" appearing in the laws of this state in connection with the performance of the duties and functions of the Mississippi State Tax Commission shall mean Department of Revenue and Commissioner of Revenue.

Cross References — Treatment of gaming license as transferred and previously licensed operation as continuing operation for purposes of this section, see § 75-76-187.

§ 75-76-193. Calculation of gross revenues; certain expenses not deductible.

(1) In calculating gross revenue, any prizes, premiums, drawings, benefits or tickets which are redeemable for money or merchandise or other promotional allowance, except money or tokens paid at face value directly to a patron as the result of a specific wager and the amount the cash paid to purchase an annuity to fund winnings paid to that patron over several years by an independent financial institution, must not be deducted as losses from winnings at any game except a slot machine.

(2) In calculating gross revenue from slot machines, the actual cost to the licensee of any personal property distributed to a patron as the result of a

legitimate wager may be deducted as a loss, but not travel expenses, food, refreshments, lodging or services.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 98, eff from and after passage (approved June 29, 1990).

§ 75-76-195. License fee based on gross revenues of licensee imposed by municipalities and counties; penalty for failure to pay fee.

(1) In addition to any state gaming license fees or taxes, from and after August 1, 1990, (a) a municipality may impose a fee upon a licensee located within the municipality for conducting, carrying on or operating any gambling game, slot machine or other game of chance based upon all the gross revenue of the licensee derived from his establishment within the municipality, and (b) a county may impose a fee upon a licensee located within the unincorporated area of the county for conducting, carrying on or operating any gambling game, slot machine or other game of chance based upon all the gross revenue of the licensee derived from his establishment within the unincorporated area of the county, as follows:

(i) Four-tenths percent (.4%) of all the gross revenue which does not exceed Fifty Thousand Dollars ($50,000.00) per calendar month;

(ii) Six-tenths percent (.6%) of all the gross revenue which exceeds Fifty Thousand Dollars ($50,000.00) per calendar month and does not exceed One Hundred Thirty-four Thousand Dollars ($134,000.00) per calendar month; and

(iii) Eight-tenths percent (.8%) of all the gross revenue of the licensee which exceeds One Hundred Thirty-four Thousand Dollars ($134,000.00) per calendar month.

(2) Whenever a municipality or county imposes a fee under this section, it shall not become effective until the first day of the month following the month in which the municipality or county adopts the ordinance imposing the fee.

(3) All revenue received from any game or gaming device which is leased for operation on the premises of licensee-owner to a person other than the owner thereof or which is located in an area or space on such premises which is leased by the licensee-owner to any such person must be attributed to the owner for the purposes of this section and be counted as part of the gross revenue of the owner. The lessee is liable to the owner for his proportionate share of such fees.

(4) If the amount of fees required to be reported and paid pursuant to this section is later determined to be greater or less than the amount actually reported and paid by the licensee, the State Tax Commission on behalf of the local government shall:

(a) Assess and collect the additional fees determined to be due, with interest thereon until paid; or

(b) Refund any overpayment, with interest thereon, to the licensee.

Interest must be computed, until paid, at the rate of one percent (1%) per month from the first day of the month following either the due date of the additional fees or the date of overpayment.

(5) Failure to pay the fees provided for in this section when they are due for continuation of a license shall be deemed a surrender of the license.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 99, eff from and after passage (approved June 29, 1990).

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" appearing in the laws of this state in connection with the performance of the duties and functions of the Mississippi State Tax Commission shall mean Department of Revenue.

Cross References — Distribution of license fees collected pursuant to this section, see § 75-76-197.

Fees collected pursuant to this section not to be deposited into State General Fund, see § 75-76-129.

Additional license fee based upon gross revenues of licensee, see § 75-76-177.

ATTORNEY GENERAL OPINIONS

Local governing authorities may impose fees upon gaming licensees conducting business within city limits based upon gross revenues derived from casino, but it is responsibility of State Tax Commission to assess and collect such fees, and to distribute them to local governing authorities. Rafferty, August 27, 1992, A.G. Op. #92-0161.

§ 75-76-197. Distribution of fees collected under provisions of section 75-76-195.

On or before the fifteenth day of each month, the gross revenue fees collected under the provisions of Section 75-76-195 during the preceding month shall be paid and distributed as follows:

(a) Fees designated as "local government fees" remitted by licensees who are located within an incorporated municipality shall be distributed:

(i) To such municipal corporation in the proportion that the population of the municipal corporation bears to the entire population of the county in which the municipal corporation is located, according to the most recent federal census; and

(ii) To the county in which the municipal corporation is located in the proportion that the population of the county outside of that municipal corporation bears to the entire population of the county, according to the most recent federal census.

(b) Fees designated as "local government fees" remitted by licensees who are not located within an incorporated municipality shall be distributed to the county in which the licensee is located.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 100, eff from and after passage (approved June 29, 1990).

Cross References — Department of Revenue to distribute local government fees pursuant to this section, see § 75-76-129.

ATTORNEY GENERAL OPINIONS

Under legislation authorizing governing authorities of City to impose fee on cruise vessel that docks within City and on which legal gaming is conducted, expenditure of monies collected for public safety purposes within municipality could be provided for through budgeting process; however, legislation contemplates direct distribution of monies to municipal school district to be expended by school board, as well as direct distribution to county which, in turn, would be responsible for expending monies for public safety and educational purposes. Bardwell, July 15, 1992, A.G. Op. #92-0503.

There are no statutory provisions in Gaming Control Act instructing county as to how it should utilize funds distributed under Section 75-76-197; County is not required to place funds received into general fund. Gex, Feb. 16, 1994, A.G. Op. #93-0810.

ISSUANCE OF GAMING LICENSES TO CORPORATIONS, LIMITED PARTNERSHIPS, HOLDING COMPANIES, INTERMEDIARY COMPANIES AND PUBLICLY TRADED CORPORATIONS

Sec.
75-76-199. Issuance of gaming licenses to corporations, limited partnerships, holding companies or intermediary companies or publicly traded corporations; definitions applicable to Sections 75-76-199 through 75-76-265.
75-76-201. State policy with respect to issuance of gaming license to corporations; waiver of requirements.
75-76-203. Eligibility requirements for corporations.
75-76-205. Additional requirements for corporations.
75-76-207. Approval of commission required for any disposition of securities of licensed corporation; finding of unsuitability of individual owner of security; effect of finding of unsuitability; certificate evidencing security to bear statement of restrictions.
75-76-209. Information required of corporations applying for gaming license.
75-76-211. Officers and directors of corporation required to be licensed; other persons required to be licensed.
75-76-213. Report of proposed issuance or transfer of corporate securities; report of change in corporate officers and directors; approval of commission.
75-76-215. Report of changes in corporate key executives; furnishing annual profit and loss statement, balance sheet and federal income return.
75-76-217. Failure of corporate employee to obtain or retain license; notice of new employee replacing terminated employee.
75-76-219. State policy with respect to issuance of gaming licenses to limited partnerships; waiver of requirements.
75-76-221. Eligibility requirements for limited partnerships.
75-76-223. Approval of commission required for any disposition of any interest in licensed limited partnerships; finding of unsuitability of individual to hold interest; effect of finding of unsuitability; certificate of limited partnership to bear statement of restrictions.
75-76-225. Information required of limited partnership applying for gaming license.
75-76-227. Partners of limited partnership required to be licensed; other persons required to be licensed.

75-76-229. Report of changes in limited partnership key executives; furnishing annual profit and loss statement, balance sheet and federal income tax return.
75-76-231. Failure of employee of limited partnership to obtain or retain license; notice of new employee replacing terminating employee.
75-76-233. Holding companies and intermediary companies; application of sections 75-76-235 through 75-76-241.
75-76-235. Requirements of holding companies and intermediary companies having subsidiary with gaming license; investigations; findings of unsuitability; certificate evidencing security in company to bear statement of restrictions; approval required for public offering of securities; additional requirements.
75-76-237. Officers, directors, etc. of holding company or intermediary company required to be found suitable; licensing requirements; failure to obtain or maintain suitability finding or license.
75-76-239. Information required of holding company and intermediary company.
75-76-241. Penalties for failure of corporate or limited partnership licensee or holding company or intermediary company to comply with laws and regulations.
75-76-243. Legislative declarations with respect to corporate acquisitions, repurchases of securities and corporate defense tactics.
75-76-245. State policy with respect to corporate acquisitions; repurchases of securities and corporate recapitalizations.
75-76-247. Regulations for review and approval of corporate acquisitions, repurchase of securities and corporate defense tactics.
75-76-249. Exemptions for publicly traded corporations; application of alternative provisions.
75-76-251. Application of foreign corporation to register as publicly traded corporation; investigation by executive director; cost of investigation.
75-76-253. Considerations in determining whether to recommend application to register as publicly traded corporation; hearing before executive director not required.
75-76-255. Requirements of publicly traded corporation owning or controlling licensed corporation, limited partnership or holding company.
75-76-257. Officers, directors and employees of publicly traded corporations subject to findings of suitability and licensing; failure to obtain or maintain suitability or license.
75-76-259. Information required from publicly traded corporations; alternative information required of publicly traded foreign corporations.
75-76-261. Failure of publicly traded corporation or its subsidiary corporation or limited partnership to comply with laws and regulations.
75-76-263. Certain persons controlling ownership interest in publicly traded corporation subject to finding of suitability; reports required to be filed with commission.
75-76-265. Effect of failure of person connected with corporate licensee, holding company or intermediary company to obtain or maintain finding of suitability or license.

§ 75-76-199. Issuance of gaming licenses to corporations, limited partnerships, holding companies or intermediary companies or publicly traded corporations; definitions applicable to Sections 75-76-199 through 75-76-265.

For the purpose of Sections 75-76-199 through 75-76-265:

(a) "Affiliated company" means a subsidiary company, holding company, intermediate company or any other form of business organization that:

(i) Controls, is controlled by or is under common control with a corporate licensee; and

(ii) Is involved in gaming activities in this state or involved in the ownership of property in this state upon which gaming is conducted.

(b) "Director" means any director of a corporation or any person performing similar functions with respect to any organization.

(c) "Equity security" means:

(i) Any voting stock of a corporation, or similar security;

(ii) Any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security;

(iii) Any such warrant or right; or

(iv) Any security having a direct or indirect participation in the profits or the issuer.

(d) "General partner" means any general partner of a limited partnership or any person performing similar functions.

(e) "Holding company" means any corporation, firm, partnership, trust or other form of business organization not a natural person which, directly or indirectly:

(i) Owns;

(ii) Has the power or right to control; or

(iii) Holds, with power to vote, all or any part of the limited partnership interests or outstanding voting securities of a corporation which holds or applies for a state gaming license.

For the purposes of this paragraph (e), in addition to other reasonable meaning of the words used, a holding company "indirectly" has, holds or owns any power, right or security mentioned in this paragraph (e) if it does so through any interest in a subsidiary or successive subsidiaries, however many such subsidiaries may intervene between the holding company and the corporate licensee or applicant.

(f) "Intermediary company" means any corporation, firm, partnership, trust or other form of business organization other than a natural person which:

(i) Is a holding company with respect to a corporation or limited partnership which holds or applies for a state gaming license; and

(ii) Is a subsidiary with respect to any holding company.

(g) "Limited partner" means any limited partner of a limited partnership or any other person having similar rights.

(h) "Limited partnership" means a partnership formed by two (2) or more persons pursuant to this chapter, having as members one or more general partners and one or more limited partners.

(i) "Limited partnership interest" means the right of a general or limited partner to receive from a limited partnership:

(i) A share of the profits;

(ii) Any other compensation by way of income; or

(iii) A return of any or all of his contribution to capital of the limited partnership, or the right to exercise any of the rights or powers provided in this chapter, whether directly or indirectly.

(j) "Publicly traded corporation" means:

(i) Any corporation or other legal entity except a natural person which:

1. Has one or more classes of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Section 78l); or

2. Is an issuer subject to Section 15(d) of the Securities Exchange Act of 1934, as amended (15 U.S.C. Section 78o); or

(ii) Any corporation or other legal entity created under the laws of a foreign country:

1. Which has one or more classes of securities registered on that country's securities exchange or over-the-counter market; and

2. Whose activities have been found by the commission to be regulated in a manner which protects the investors and the State of Mississippi.

(k) "Subsidiary" means:

(i) Any corporation all or any part of whose outstanding equity securities are:

1. Owned;

2. Subject to a power or right of control; or

3. Held, with power to vote, by a holding company or intermediary company; or

(ii) Any firm, partnership, trust or other form of business organization not a natural person, all or any interest in which is:

1. Owned;

2. Subject to a power or right of control; or

3. Held, with power to vote, by a holding company or intermediary company.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 101, eff from and after passage (approved June 29, 1990).

Cross References — Authority of commission to grant licenses to corporations, see § 75-76-67.

Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-201. State policy with respect to issuance of gaming license to corporations; waiver of requirements.

(1) The policy of the State of Mississippi with respect to the issuance of state gaming licenses to corporations is:

(a) To maintain effective control over the conduct of gaming by corporate licensees.

(b) To restrain any speculative promotion of the stock or other securities of gaming enterprises.

(2) The commission may waive, either selectively or by general regulation, one or more of the requirements of Sections 75-76-203 through 75-76-217 if it makes a written finding that such waiver is consistent with the state policy.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 102, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-203. Eligibility requirements for corporations.

In order to be eligible to receive a state gaming license, a corporation shall:

(a) Be incorporated:

(i) In the State of Mississippi, although such corporation may be a wholly or partly owned subsidiary of a corporation which is chartered in another state of the United States; or

(ii) In another state of the United States, if all persons having any direct or indirect interest of any nature in such corporation are licensed as required by this chapter and any applicable regulations of the commission;

(b) Maintain an office of the corporation on the licensed premises;

(c) Comply with all of the requirements of the laws of the State of Mississippi pertaining to corporations; and

(d) Maintain a ledger in the principal office of the corporation in Mississippi, which shall:

(i) At all times reflect the ownership of every class of security issued by the corporation; and

(ii) Be available for inspection by the commission or the executive director or his employees at all reasonable times without notice.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 103, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-201.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-205. Additional requirements for corporations.

No domestic corporation is eligible to receive a gaming license unless it is in good standing in this state. No foreign corporation is eligible to receive a gaming license unless it qualifies to do business in this state.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 104, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-201.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-207. Approval of commission required for any disposition of securities of licensed corporation; finding of unsuitability of individual owner of security; effect of finding of unsuitability; certificate evidencing security to bear statement of restrictions.

(1) The purported sale, assignment, transfer, pledge or other disposition of any security issued by a corporation which holds a state gaming license or the granting of an option to purchase such a security is void unless approved in advance by the commission.

(2) If at any time the commission finds that an individual owner of any such security is unsuitable to continue as a gaming licensee in this state, the owner shall immediately offer the security to the issuing corporation for purchase. The corporation shall purchase the security so offered, for cash at fair market value, within ten (10) days after the date of the offer.

(3) Beginning upon the date when the commission serves upon the corporation notice of a determination of unsuitability pursuant to subsection (2), it is unlawful for the unsuitable owner:

(a) To receive any dividend or interest upon any such security;

(b) To exercise, directly or through any trustee or nominee, any voting right conferred by such security; or

(c) To receive any remuneration in any form from the corporation, for services rendered or otherwise.

(4) Every security issued by a corporation which holds a gaming license must bear a statement, on both sides of the certificate evidencing the security, of the restrictions imposed by this section.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 105, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-201.

Requirement that corporations report any proposed issuance or transfer of corporate securities, see § 75-76-213.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to exempt publicly traded corporations from compliance with the provisions of this section, see § 75-76-249.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-209. Information required of corporations applying for gaming license.

A corporation which applies for a state gaming license shall register as a corporation with the commission and shall provide the following information to the executive director:

(a) The organization, financial structure and nature of the business to be operated, including the names, personal history and fingerprints of all officers, directors and key employees, and the names, addresses and number of shares held by all stockholders.

(b) The rights and privileges acquired by the holders of different classes of authorized securities, including debentures.

(c) The terms on which securities are to be offered.

(d) The terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security device.

(e) The extent of the equity security holding in the corporation of all officers, directors and underwriters, and their remuneration as compensation for services, in the form of salary, wages, fees or otherwise.

(f) Remuneration to persons other than directors and officers exceeding Thirty Thousand Dollars ($30,000.00) per annum.

(g) Bonus and profit sharing arrangements.

(h) Management and service contracts.

(i) Options existing or to be created.

(j) Balance sheets for at least three (3) preceding fiscal years, or, if the corporation has not been incorporated for a period of three (3) years, balance sheets from the time of its incorporation. All balance sheets shall be certified by independent public accountants certified or registered in the State of Mississippi.

(k) Profit and loss statements for at least the three (3) preceding fiscal years, or, if the corporation has not been incorporated for a period of three (3) years, profit and loss statements from the time of its incorporation. All profit and loss statements shall be certified by independent public accountants certified or registered in the State of Mississippi.

(*l*) Any further financial data which the executive director or the commission may deem necessary or appropriate for the protection of the State of Mississippi or licensed gambling, or both.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 106, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-201.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-211. Officers and directors of corporation required to be licensed; other persons required to be licensed.

All officers and directors of the corporation which holds or applies for a state gaming license must be licensed individually, according to the provisions of this chapter; and if, in the judgment of the commission, the public interest will be served by requiring any or all of the corporation's individual stockholders, lenders, holders of evidences of indebtedness, underwriters, key executives, agents or employees to be licensed, the corporation shall require such persons to apply for a license in accordance with the laws and requirements in effect at the time the commission requires such licensing. A person who is required to be licensed by this section shall apply for a license within thirty (30) days after he becomes an officer or director. A person who is required to be licensed pursuant to a decision of the commission shall apply for a license within thirty (30) days after the executive director requests him to do so.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 107, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-201.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-213. Report of proposed issuance or transfer of corporate securities; report of change in corporate officers and directors; approval of commission.

(1) After licensing pursuant to this chapter, but before the corporation may issue or transfer any security to any person, it shall file a report of its proposed action with the commission and the executive director, which report shall request the approval of the commission. The commission shall have ninety (90) days within which to approve or deny the request. If the commission denies the request, the corporation shall not issue or transfer any such security.

(2) After licensing pursuant to this chapter, the corporation shall file a report of each change of the corporate officers and directors with the commission and the executive director. The commission shall have ninety (90) days within which to approve or disapprove such change. During such ninety-day period and thereafter if the commission does not disapprove the change, such officer or director shall be entitled to exercise all powers of the office to which he was so elected or appointed.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 108, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-201.

Approval of commission required for any disposition of securities of licensed corporations, see § 75-76-207.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-215. Report of changes in corporate key executives; furnishing annual profit and loss statement, balance sheet and federal income return.

(1) After licensing pursuant to this chapter, the corporation shall:

(a) Report to the commission and the executive director in writing any change in corporate personnel who have been designated by the commission or the executive director as key executives.

(b) Furnish the executive director an annual profit and loss statement and an annual balance sheet.

(2) The commission or the executive director may require that any such corporation furnish the commission or the executive director with a copy of its federal income tax return within thirty (30) days after such return is filed with the federal government.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 109, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-201.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-217. Failure of corporate employee to obtain or retain license; notice of new employee replacing terminated employee.

(1) If an employee of a corporate licensee who is required to be licensed individually:

(a) Does not apply for a license within thirty (30) days after the executive director requests him to do so, and the commission makes a finding of unsuitability for that reason; or

(b) Is denied a license; or

(c) Has his license revoked by the commission,

the corporate gaming licensee by whom he is employed shall terminate his employment in any capacity in which he is required to be licensed and shall not permit him to exercise a significant influence over the operation of the gaming establishment upon being notified by registered or certified mail of that action.

(2) If the corporate licensee designates another employee to replace the employee whose employment was terminated, it shall promptly notify the commission or the executive director and shall cause the newly designated employee to apply for a gaming license.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 110, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-201.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-219. State policy with respect to issuance of gaming licenses to limited partnerships; waiver of requirements.

(1) The policy of the State of Mississippi with respect to the issuance of state gaming licenses to limited partnerships is:

(a) To maintain effective control over the conduct of gaming by limited partnership licensees.

(b) To restrain any speculative promotion of limited partnership interests in gaming enterprises.

(2) The commission may waive, either selectively or by general regulation, one or more of the requirements of Sections 75-76-221 through 75-76-231 if it makes a written finding that a waiver is consistent with the state policy set forth in this chapter.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 111, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

Limited partnerships generally see § 79-14-101 et seq.

§ 75-76-221. Eligibility requirements for limited partnerships.

In order to be eligible to receive a state gaming license, a limited partnership shall:

(a) Be formed under the laws of this state;

(b) Maintain an office of the limited partnership on the licensed premises;

(c) Comply with all of the requirements of the laws of this state pertaining to limited partnerships; and

(d) Maintain a ledger in the principal office of the limited partnership in this state which must:

(i) At all times reflect the ownership of all interests in the limited partnership; and

(ii) Be available for inspection by the commission or the executive director or his employees at all reasonable times without notice.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 112, eff from and after passage (approved June 29, 1990).

Cross References — Additional requirements for obtaining gaming license, including notice of intent to apply for gaming license, resolution authorizing gaming, and referendum on allowing gaming, see § 19-3-39.

Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-219.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

Limited partnerships generally, see § 79-14-101 et seq.

§ 75-76-223. Approval of commission required for any disposition of any interest in licensed limited partnerships; finding of unsuitability of individual to hold interest; effect of finding of unsuitability; certificate of limited partnership to bear statement of restrictions.

(1) The sale, assignment, transfer, pledge or other disposition of any interest in a limited partnership which holds a state gaming license is ineffective unless approved in advance by the commission.

(2) If at any time the commission finds that an individual owner of any such interest is unsuitable to hold that interest, the commission shall immediately notify the limited partnership of that fact. The limited partnership shall, within ten (10) days from the date that it receives the notice from the commission, return to the unsuitable owner, in cash, the amount of his capital account as reflected on the books of the partnership.

(3) Beginning on the date when the commission serves notice upon the limited partnership of a determination of unsuitability pursuant to subsection (2), it is unlawful for the unsuitable owner:

(a) To receive any share of the profits or interest upon any limited partnership interest;

(b) To exercise, directly or through any trustee or nominee, any voting right conferred by such interest; or

(c) To receive any remuneration in any form from the limited partnership, for services rendered or otherwise.

(4) The certificate of limited partnership of any limited partnership holding a state gaming license must contain a statement of the restrictions imposed by this section.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 113, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-219.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

Assignment of limited partnership interests generally, see §§ 79-14-701 through 79-14-705.

§ 75-76-225. Information required of limited partnership applying for gaming license.

A limited partnership which applies for a state gaming license shall register as a limited partnership with the commission and shall provide the following information to the executive director:

(a) The organization, financial structure and nature of the business to be operated, including the names, personal history and fingerprints of all general partners and key employees, and the name, address and interest of each limited partner.

(b) The rights, privileges and relative priorities of limited partners as to the return of contributions to capital, and the right to receive income.

(c) The terms on which limited partnership interests are to be offered.

(d) The terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security device.

(e) The extent of the holding in the limited partnership of all underwriters, and their remuneration as compensation for services, in the form of salary, wages, fees or otherwise.

(f) Remuneration to persons other than general partners exceeding Thirty Thousand Dollars ($30,000.00) per annum.

(g) Bonus and profit sharing arrangements.

(h) Management and service contracts.

(i) Options existing, or to be created.

(j) Balance sheets for at least the three (3) preceding fiscal years, or, if the limited partnership has not been in existence for three (3) years, balance sheets from the time of its formation. All balance sheets must be certified by independent public accountants certified or registered in this state.

(k) Profit and loss statements for at least the three (3) preceding fiscal years, or, if the limited partnership has not been in existence for three (3) years, profit and loss statements from the time of its formation. All profit and loss statements must be certified by independent public accountants certified or registered in this state.

(*l*) Any further financial data which the executive director or the commission may deem necessary or appropriate for the protection of the State of Mississippi or licensed gambling, or both.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 114, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-219.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-227. Partners of limited partnership required to be licensed; other persons required to be licensed.

Every general partner and limited partner of a limited partnership which holds or applies for a state gaming license must be licensed individually, according to the provisions of this chapter; and if, in the judgment of the commission, the public interest will be served by requiring any or all of the limited partnership's lenders, holders of evidence of indebtedness, underwriters, key executives, agents or employees to be licensed, the limited partnership shall require those persons to apply for a license in accordance with the laws and requirements in effect at the time the commission requires the licensing. Publicly traded corporations which are limited partners of limited partnerships are not required to be licensed but shall comply with this chapter. A person who is required to be licensed as a general or limited partner shall not receive that position until he secures the required approval of the commission. A person who is required to be licensed pursuant to a decision of the commission shall apply for a license within thirty (30) days after the executive director requests him to do so.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 115, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-219.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-229. Report of changes in limited partnership key executives; furnishing annual profit and loss statement, balance sheet and federal income tax return.

(1) After licensing pursuant to this chapter, the limited partnership shall:

(a) Report to the commission and the executive director in writing any change in personnel who have been designated by the commission as key executives.

(b) Furnish the executive director an annual profit and loss statement and an annual balance sheet.

(2) The commission or the executive director may require that any limited partnership furnish the commission or the executive director with a copy of its federal income tax return within thirty (30) days after the return is filed with the federal government.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 116, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-219.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-231. Failure of employee of limited partnership to obtain or retain license; notice of new employee replacing terminating employee.

(1) If an employee of a limited partnership licensee who is required to be licensed individually:

(a) Does not apply for a license within thirty (30) days after the executive director requests him to do so, and the commission makes a finding of unsuitability for that reason; or

(b) Is denied a license; or

(c) Has his license revoked by the commission, the limited partnership gaming licensee by whom he is employed shall terminate his employment upon notification by registered or certified mail to the limited partnership of that action.

(2) If the limited partnership licensee designates another employee to replace the employee whose employment was terminated, it shall promptly notify the commission or the executive director and cause the newly designated employee to apply for a gaming license.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 117, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-219.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-233. Holding companies and intermediary companies; application of sections 75-76-235 through 75-76-241.

Sections 75-76-235 through 75-76-241, inclusive, apply to every holding company or intermediary company except a publicly traded corporation which has been exempted from the operation of all or some of the provisions of such sections.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 118, eff from and after passage (approved June 29, 1990).

Cross References — Exemption of holding companies from certain licensing requirements, see § 75-76-57.

Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-235. Requirements of holding companies and intermediary companies having subsidiary with gaming license; investigations; findings of unsuitability; certificate evidencing security in company to bear statement of restrictions; approval required for public offering of securities; additional requirements.

(1) If the corporation applying for or holding a license is or becomes a subsidiary, each holding company and each intermediary company with respect thereto must:

(a) Qualify to do business in the State of Mississippi.

(b) If it is a corporation, register with the commission and furnish the executive director:

(i) A complete list of all stockholders when it first registers, and annually thereafter, within thirty (30) days after the annual meeting of the stockholders of the corporation, showing the number of shares held by each;

(ii) The names of all corporate officers within thirty (30) days of their appointment; and

(iii) The names of all members of the directors within thirty (30) days of their election.

(c) If it is a firm, partnership, trust or other form of business organization, it must register with the commission and furnish the executive director such analogous information as the executive director may prescribe.

(2) The commission or the executive director may, in their discretion, make such investigations concerning the officers, directors, underwriters, security holders, partners, principals, trustees or direct or beneficial owners of any interest in any holding company or intermediary company as it deems necessary, either at the time of initial registration or at any time thereafter.

(3) If at any time the commission finds that any person owning, controlling or holding with power to vote all or any part of any class of security of, or any interest in, any holding company or intermediary company is unsuitable to be connected with a licensed gaming enterprise, it shall so notify such unsuitable person, the holding company or intermediary company, or both. Such unsuitable person shall immediately offer such security to the issuing corporation, or such interest to the firm, partnership, trust or other business organization, for purchase. The corporation shall purchase the security so offered, or the firm, partnership, trust or other business organization shall purchase the interest so offered, for cash at fair market value within ten (10) days after the date of the offer.

(4) Beginning upon the date when the commission serves notice of a determination of unsuitability pursuant to subsection (3), it is unlawful for the unsuitable person:

(a) To receive any dividend or interest upon any such securities, or any dividend, payment or distribution of any kind from any holding company or intermediary company;

(b) To exercise, directly or indirectly or through any proxy, trustee or nominee, any voting right conferred by such securities or interest; or

(c) To receive any remuneration in any form from the corporation gaming licensee, or from any holding company or intermediary company with respect thereto, for services rendered or otherwise.

(5) Every security issued by a holding company or intermediary company which directly or indirectly:

(a) Owns;

(b) Has the power or right to control; or

(c) Holds with power to vote

all or any part of the outstanding equity securities of a corporate gaming licensee shall bear a statement, on both sides of the certificate evidencing such security, of the restrictions imposed by this section.

(6) A holding company or intermediary company subject to subsection (1) shall not make any public offering of any of its securities unless such public offering has been approved by the commission.

(7) The commission may, at any time and from time to time, by general regulation or selectively, impose on any holding company or intermediary company any requirement not inconsistent with law which it may deem necessary in the public interest. Without limiting the generality of the preceding sentence, any such requirement may deal with the same subject matter as, but be more stringent than, the requirements imposed by Sections 75-76-199 through 75-76-265, inclusive.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 119, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Application of this section to every holding company or intermediary company except exempt publicly traded corporations, see § 75-76-233.

Authority of commission to exempt publicly traded corporations from compliance with the provisions of this section, see § 75-76-249.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-237. Officers, directors, etc. of holding company or intermediary company required to be found suitable; licensing requirements; failure to obtain or maintain suitability finding or license.

(1) Each officer, employee, director, partner, principal, trustee or direct or beneficial owner of any interest in any holding company or intermediary company who the commission determines is or is to become engaged in the administration or supervision of, or any other significant involvement with, the activities of a corporate licensee, must be found suitable therefor and may be required to be licensed by the commission.

(2) If any officer, employee, director, partner, principal, trustee or direct or beneficial owner required to be found suitable pursuant to subsection (1) fails to apply for a finding of suitability or a gaming license within thirty (30) days after being requested so to do by the executive director, is not found suitable or is denied a license by the commission, or if his license or the finding of his suitability is revoked after appropriate findings by the commission, the holding company or intermediary company, or both, shall immediately remove that person from any position in the administration or supervision of, or any other significant involvement with, the activities of the corporate licensee. If the commission suspends the suitability or license of any officer, employee, director, partner, principal, trustee or owner, the holding company or intermediary company, or both, shall, immediately and for the duration of the suspension, suspend him from performing any duties in administration or supervision of the activities of the corporate licensee and from any other significant involvement therewith.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 120, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Application of this section to every holding company or intermediary company except exempt publicly traded corporations, see § 75-76-233.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to exempt publicly traded corporations from compliance with the provisions of this section, see § 75-76-249.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-239. Information required of holding company and intermediary company.

If the corporation applying for or holding a license is or becomes a subsidiary, each holding company and intermediary company shall furnish the executive director the following information:

(a) The organization, financial structure and nature of the business it operates.

(b) The terms, position, rights and privileges of the different classes of securities outstanding.

(c) The terms on which its securities are to be, and during the preceding three (3) years have been, offered to the public or otherwise.

(d) The terms and conditions of all outstanding loans, mortgages, trust deeds, pledges, or any other indebtedness or security device pertaining to the corporate gaming licensee.

(e) The extent of the security holding or other interest in the holding company or intermediary company of all officers, employees, directors, underwriters, partners, principals, trustees or any direct or beneficial owner, and any remuneration as compensation for their services, in the form of salary, wages, fees, or by contract, pertaining to the corporate gaming licensee.

(f) Remuneration to others than directors and officers exceeding Forty Thousand Dollars ($40,000.00) per annum.

(g) Bonus and profit sharing arrangements.

(h) Management and service contracts.

(i) Options existing or to be created in respect of their securities or other interests.

(j) Balance sheets, certified by independent certified public accountants, for not more than the three (3) preceding fiscal years or, if the holding company or intermediary company has not been in existence more than three (3) years, balance sheets from the time of its establishment.

(k) Profit and loss statements, certified by independent certified public accountants, for not more than the three (3) preceding fiscal years, or, if the holding company or intermediary company has not been in existence more than three (3) years, profit and loss statements from the time of its establishment.

(*l*) Any further financial statements which the executive director or the commission may deem necessary or appropriate for the protection of the State of Mississippi, licensed gambling, or both.

(m) An annual profit and loss statement and annual balance sheet, and a copy of its annual federal income tax return within thirty (30) days after such return is filed with the federal government.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 121, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Application of this section to every holding company or intermediary company except exempt publicly traded corporations, see § 75-76-233.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to exempt publicly traded corporations from compliance with the provisions of this section, see § 75-76-249.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-241. Penalties for failure of corporate or limited partnership licensee or holding company or intermediary company to comply with laws and regulations.

If any corporate or limited partnership licensee, or if any holding company or intermediary company with respect thereto, does not comply with the laws of this state and the regulations of the commission, the commission may, in its discretion, do any one, all or a combination of the following:

(a) Revoke, limit, condition or suspend the gaming license of the corporate or limited partnership licensee; or

(b) Fine the persons involved, or the corporate or limited partnership licensee, or such holding company or intermediary company, in accordance with the laws of this state and the regulations of the commission.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 122, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Application of this section to every holding company or intermediary company except exempt publicly traded corporations, see § 75-76-233.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to exempt publicly traded corporations from compliance with the provisions of this section, see § 75-76-249.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-243. Legislative declarations with respect to corporate acquisitions, repurchases of securities and corporate defense tactics.

The Legislature hereby declares that:

(a) Some corporate acquisitions, repurchases of securities and corporate defense tactics affecting corporate gaming licensees and publicly traded corporations that are affiliated companies can constitute business practices which may be injurious to stable and productive corporate gaming.

(b) A regulatory scheme established to ameliorate the potential adverse effects of these business practices upon the gaming industry must be properly developed to balance the interests of Mississippi gaming, interstate commerce and federal regulation of securities.

(c) A regulatory scheme established to ameliorate the potential adverse effects of these business practices upon the gaming industry may best be accomplished by the adoption and enforcement of regulations by the commission.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 123, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-245. State policy with respect to corporate acquisitions; repurchases of securities and corporate recapitalizations.

The policy of the State of Mississippi with respect to corporate acquisitions, repurchases of securities and corporate recapitalizations affecting corporate licensees and publicly traded corporations that are affiliated companies is to:

(a) Assure the financial stability of corporate licensees and affiliated companies;

(b) Preserve the beneficial aspects of conducting business in the corporate form; and

(c) Promote a neutral environment for the orderly governance of corporate affairs that is consistent with the public policy of this state concerning gaming.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 124, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-247. Regulations for review and approval of corporate acquisitions, repurchase of securities and corporate defense tactics.

The commission may adopt regulations providing for the review and approval of corporate acquisitions, repurchases of securities and corporate defense tactics affecting corporate gaming licensees and publicly traded corporations that are affiliated companies. The regulations must be consistent with:

(a) The policy of this state as expressed in this chapter;
(b) The provisions of this chapter;
(c) The requirements of the Constitution of the United States; and
(d) Federal regulation of securities.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 125, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-249. Exemptions for publicly traded corporations; application of alternative provisions.

The commission may exempt a publicly traded corporation from compliance with:

(a) The provisions of Section 75-76-207.

(b) Some or all of the provisions of Sections 75-76-235 through 75-76-241. To the extent of such an exemption, the corporation shall comply instead with the provisions of Sections 75-76-253 through 75-76-265, except as otherwise ordered by the commission.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 126, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-251. Application of foreign corporation to register as publicly traded corporation; investigation by executive director; cost of investigation.

(1) A corporation or other legal entity which is organized under the laws of another country and seeks to register with the commission as a publicly traded corporation must submit an application to the executive director.

(2) The application must provide the executive director with information showing that the applicant's business activities are regulated by a governmental authority of the foreign country in a manner which will prevent those activities from posing any threat to the control of gaming in this state.

(3) The executive director may conduct an investigation of the applicant and the governmental authority responsible for regulation of the applicant. The executive director shall require the applicant to pay the executive director's anticipated expenses for such an investigation, and may, after completing such an investigation, charge the applicant any amount necessary to cover an underpayment of the actual expenses.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 127, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Factors to be considered by executive director in determining whether to recommend approval of application submitted pursuant to this section, see § 75-76-253.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-253. Considerations in determining whether to recommend application to register as publicly traded corporation; hearing before executive director not required.

In determining whether to recommend that the commission approve an application submitted pursuant to Section 75-76-251, the executive director may consider, in addition to all other requirements of this chapter:

(a) Whether the governmental authority in the foreign country has an effective system to regulate the applicant and the relations between the investing public and the applicant and other corporations listed on the exchange;

(b) Whether the system includes:

(i) A requirement that the listed corporations make full disclosure of information to the investing public;

(ii) A requirement that the listed corporations file periodic reports with the governmental authority;

(iii) A method to prevent any manipulation of the prices of securities or any employment of deceptive or misleading devices; and

(iv) A restriction on margins to prevent any excessive use of credit for the purchase or carrying of securities listed on the exchange;

(c) The availability of means by which the commission or the executive director may obtain adequate information from the governmental authority in the foreign country concerning the applicant's activities and/or supervision of the gaming activities of the corporate or limited partnership gaming licensee;

(d) Such other matters as the executive director or the commission finds it necessary to consider to protect regulated gaming in Mississippi. The executive director may recommend the rejection of any such application without a hearing.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 128, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Requirement that publicly traded corporations comply with provisions of this section when exempted from the provisions of certain other sections, see § 75-76-249.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-255. Requirements of publicly traded corporation owning or controlling licensed corporation, limited partnership or holding company.

(1) If a corporation or limited partnership applying for or holding a state gaming license is or becomes owned in whole or in part or controlled by a publicly traded corporation, such publicly traded corporation must:

(a) Maintain a ledger in the principal office of its subsidiary which is licensed to conduct gaming in this state which must:

(i) Reflect the ownership of record of each outstanding share of any class of equity security issued by the publicly traded corporation. The ledger may initially consist of a copy of its latest list of equity security holders and thereafter be maintained by adding a copy of such material it regularly receives from the transfer agent for its equity securities of any class which are outstanding.

(ii) Be available for inspection by the commission or the executive director and his employees at all reasonable times without notice.

(b) Register with the commission and provide the following information to the executive director:

(i) The organization, financial structure and nature of the business of the publicly traded corporation, including the names of all officers, directors and any employees actively and directly engaged in the administration or supervision of the activities of the corporate or limited partnership gaming licensee, and the names, addresses and number of shares held of record by holders of its equity securities.

(ii) The rights and privileges accorded the holders of different classes of its authorized equity securities.

(iii) The terms on which its equity securities are to be, and during the preceding three (3) years have been, offered by the corporation to the public or otherwise initially issued by it.

(iv) The terms and conditions of all its outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security device, directly relating to the gaming activities of the corporate or limited partnership gaming licensee.

(v) The extent of the equity security holdings of record in the publicly traded corporation of all officers, directors, underwriters and persons owning of record equity securities of any class of the publicly traded corporation, and any payment received by any such person from the publicly traded corporation for each of its three (3) preceding fiscal years for any reason whatsoever.

(vi) Remuneration exceeding Forty Thousand Dollars ($40,000.00) per annum to persons other than directors and officers who are actively and directly engaged in administration or supervision of the gaming activities of the corporate or limited partnership gaming licensee.

(vii) Bonus and profit-sharing arrangements of the publicly traded corporation directly or indirectly relating to the gaming activities of the corporate or limited partnership gaming licensee.

(viii) Management and service contracts of the publicly traded corporation directly or indirectly relating to the gaming activities of the corporate or limited partnership gaming licensee.

(ix) Options existing or from time to time created in respect of its equity securities.

(x) Balance sheets, certified by independent public accountants, for at least the three (3) preceding fiscal years, or if the publicly traded corporation has not been incorporated for a period of three (3) years, balance sheets from the time of its incorporation. These balance sheets may be those filed by it with or furnished by it to the Securities and Exchange Commission.

(xi) Profit and loss statements, certified by independent certified public accountants, for at least three (3) preceding fiscal years, or, if the publicly traded corporation has not been incorporated for a period of three (3) years, profit and loss statements from the time of its incorporation. These profit and loss statements may be those filed by it with or furnished by it to the Securities and Exchange Commission.

(xii) Any further information within the knowledge or control of the publicly traded corporation which either the commission or the executive director may deem necessary or appropriate for the protection of this state or licensed gambling, or both. The commission or the executive director may, in their discretion, make such investigation of the publicly traded corporation or any of its officers, directors, security holders or other persons associated therewith as they deem necessary.

(2) If the publicly traded corporation is a foreign corporation, it must also qualify to do business in this state.

(3) The commission may, at any time and from time to time, by general regulation or selectively, impose on any publicly traded corporation any requirement not inconsistent with law which it may deem necessary in the public interest. Without limiting the generality of the preceding sentence, any such requirement may deal with the same subject matter as, but be more stringent than, the requirements imposed by Sections 75-76-199 through 75-76-265, inclusive.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 129, eff from and after passage (approved June 29, 1990).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (1). The word "applying" was inserted following "partnership". The Joint Committee ratified the correction at its December 3, 1996, meeting.

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Requirement that publicly traded corporations comply with provisions of this section when exempted from the provisions of certain other sections, see § 75-76-249.

§ 75-76-257. Officers, directors and employees of publicly traded corporations subject to findings of suitability and licensing; failure to obtain or maintain suitability or license.

(1) Each officer and employee of a publicly traded corporation who the commission determines is, or is to become, actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of the corporate or limited partnership gaming licensee must be found suitable therefor and may be required to be licensed by the commission. Each director of a publicly traded corporation who the commission determines is, or is to become, actively and directly engaged in the administration or supervision of the gaming activities at a licensed gaming establishment of the corporate or limited partnership licensee must be found suitable therefor and may be required to be licensed by the commission.

(2) If any officer, director or employee of a publicly traded corporation required to be licensed or found suitable pursuant to subsection (1) fails to apply for a gaming license or finding of suitability within thirty (30) days after being requested to do so by the executive director, or is denied a license or not found suitable by the commission, or if his license or the finding of his suitability is revoked after appropriate findings by the commission, the publicly traded corporation shall immediately remove that officer or employee from any office or position wherein he is actively and directly engaged in the administration or supervision of, or any other significant involvement with,

the activities of the corporate or limited partnership gaming licensee, or shall immediately remove that director from any office or position wherein he is actively and directly engaged in the administration or supervision of the gaming activities of the corporate or limited partnership gaming licensee. If the commission suspends the finding of suitability of any officer, director or employee, the publicly traded corporation shall, immediately and for the duration of the suspension, suspend that officer or employee from performance of any duties wherein he is actively and directly engaged in administration or supervision of, or any other significant involvement with, the activities of the corporate or limited partnership gaming licensee, or immediately and for the duration of the suspension suspend that director from performance of any duties wherein he is actively and directly engaged in administration or supervision of the activities at a licensed gaming establishment of the corporate or limited partnership licensee.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 130, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Requirement that publicly traded corporations comply with provisions of this section when exempted from the provisions of certain other sections, see § 75-76-249.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-259. Information required from publicly traded corporations; alternative information required of publicly traded foreign corporations.

(1) Except as provided in subsection (2), after the publicly traded corporation has registered pursuant to this chapter, and while the subsidiary holds a gaming license, the publicly traded corporation shall:

(a) Report promptly to the executive director in writing any change in its officers, directors or employees who are actively and directly engaged in the administration or supervision of the gaming activities of the corporate or limited partnership gaming licensee.

(b) Each year furnish to the executive director a profit and loss statement and a balance sheet of the publicly traded corporation as of the end of the year and, upon request of the executive director therefor, a copy of the publicly traded corporation's federal income tax return within thirty (30) days after the return is filed with the federal government. All profit and loss statements and balance sheets must be submitted within one hundred twenty (120) days after the close of the fiscal year to which they relate and may be those filed by the publicly traded corporation with or furnished by it to the Securities and Exchange Commission.

(c) Mail to the executive director a copy of any statement, or amendment thereto, received from a stockholder or group of stockholders pursuant to Section 13(d) of the Securities Exchange Act of 1934, as amended, within ten (10) days after receiving the statement or amendment thereto, and report promptly to the executive director in writing any changes in ownership of record of its equity securities which indicate that any person has become the owner of record of more than ten percent (10%) of its outstanding equity securities of any class.

(d) Upon request of the executive director, furnish to it a copy of any document filed by the publicly traded corporation with the Securities and Exchange Commission or with any national or regional securities exchange, including documents considered to be confidential in nature, or any document furnished by it to any of its equity security holders of any class.

(2) A publicly traded corporation which was created under the laws of a foreign country shall, instead of complying with subsection (1):

(a) Each year furnish to the executive director a profit and loss statement and a balance sheet of the publicly traded corporation as of the end of the year, and, upon request of the executive director therefor, a copy of the publicly traded corporation's federal income tax return within thirty (30) days after the return is filed with the federal government. All profit and loss statements and balance sheets must be submitted within one hundred twenty (120) days after the close of the fiscal year to which they relate and may be those filed by the publicly traded corporation with or furnished by it to the foreign governmental agency that regulates the sale of its securities.

(b) Mail to the executive director a copy of any statement, or amendment thereto, received from a stockholder or group of stockholders pursuant to law, within ten (10) days after receiving the statement or amendment thereto, and report promptly to the executive director in writing any changes in ownership of record of its equity securities which indicate that any person has become the owner of record of more than ten percent (10%) of its outstanding equity securities of any class.

(c) Upon request of the executive director, furnish to it a copy of any document filed by the publicly traded corporation with the foreign governmental agency that regulates the sale of its securities exchange, including documents considered to be confidential in nature, or any document furnished by it to any of its equity security holders of any class.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 131, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Requirement that publicly traded corporations comply with provisions of this section when exempted from the provisions of certain other sections, see § 75-76-249.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

Federal Aspects — Section 13(d) of the Securities and Exchange Act of 1934, see 15 USCS § 78m(d).

§ 75-76-261. Failure of publicly traded corporation or its subsidiary corporation or limited partnership to comply with laws and regulations.

If any corporate or limited partnership licensee owned or controlled by a publicly traded corporation subject to the provisions of this chapter, or that publicly traded corporation, does not comply with the laws of this state and the regulations of the commission, the commission may, in its discretion, do any one, all or a combination of the following:

(a) Revoke, limit, condition or suspend the gaming license of the corporate or limited partnership licensee; or

(b) Fine the persons involved, the corporate or limited partnership licensee or the publicly traded corporation in accordance with the laws of this state and the regulations of the commission.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 132, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Requirement that publicly traded corporations comply with provisions of this section when exempted from the provisions of certain other sections, see § 75-76-249.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

§ 75-76-263. Certain persons controlling ownership interest in publicly traded corporation subject to finding of suitability; reports required to be filed with commission.

(1) Each person who acquires, directly or indirectly, beneficial ownership of any voting security in a publicly traded corporation which is registered with the commission may be required to be found suitable if the commission has reason to believe that his acquisition of such ownership would otherwise be inconsistent with the declared policy of this state.

(2) Each person who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of more than five percent (5%) of any

class of voting securities of publicly traded corporation registered with the commission, and who is required to report such acquisition to the Securities and Exchange Commission pursuant to Section 13(d)(1), 13(g) or 16(a) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78m(d)(1), 78m(g) and 78p(a), respectively), shall file a copy of that report, and any amendments thereto, with the commission within ten (10) days after filing that report with the Securities and Exchange Commission.

(3) Each person who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of more than ten percent (10%) of any class of voting securities of a publicly traded corporation registered with the commission, and who is required to report the acquisition pursuant to Section 13(d)(1), 13(g) or 16(a) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78m(d)(1), 78m(g) and 78p(a), respectively), must be found suitable by the commission.

(4) A person who acquires beneficial ownership of any voting security in a publicly traded corporation created under the laws of a foreign country which is registered with the commission shall file such reports and is subject to such a finding of suitability as the commission may prescribe.

(5) Any person required by the commission or by this section to be found suitable shall:

(a) Apply for a finding of suitability within thirty (30) days after the executive director requests that he do so; and

(b) Together with the application, deposit with the State Tax Commission a sum of money which, in the opinion of the executive director, will be adequate to pay the anticipated costs and charges incurred in the investigation and processing of the application, and deposit such additional sums as are required by the executive director to pay final costs and charges.

(6) Any person required by the commission or this section to be found suitable by the commission shall not hold directly or indirectly the beneficial ownership of any voting security of a publicly traded corporation which is registered with the commission beyond that period of time prescribed by the commission.

(7) The violation of subsection (5) or (6) is a misdemeanor.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 133, eff from and after passage (approved June 29, 1990).

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" appearing in the laws of this state in connection with the performance of the duties and functions of the Mississippi State Tax Commission shall mean Department of Revenue.

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Requirement that publicly traded corporations comply with provisions of this section when exempted from the provisions of certain other sections, see § 75-76-249.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 75-76-265. Effect of failure of person connected with corporate licensee, holding company or intermediary company to obtain or maintain finding of suitability or license.

If any person who is required by or pursuant to this chapter to be licensed or found suitable because of his connection with a corporate licensee, holding company or intermediary company, including a publicly traded corporation, fails to apply for a license or a finding of suitability, or if his license or finding of suitability is revoked, the corporate licensee, holding company, intermediary company or any person who directly or indirectly controls, is controlled by or is under common control with the corporate licensee, holding company or intermediary company shall not, after receipt of written notice from the commission:

(a) Pay him any remuneration for any service relating to the activities of a corporate licensee, except for amounts due for services rendered before the date of receipt of notice of such action by the commission. Any contract or agreement for personal services or the conduct of any activity at a licensed gaming establishment between a former employee whose employment was terminated because of failure to apply for a license or a finding of suitability, denial of a license or finding of suitability, or revocation of a license or a finding of suitability, or any business enterprise under the control of that employee and the corporate licensee, holding or intermediary company or registered publicly traded corporation is subject to termination. Every such agreement shall be deemed to include a provision for its termination without liability on the part of the licensee upon a finding by the commission that the business or any person associated therewith is unsuitable to be associated with a gaming enterprise. Failure expressly to include such a condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

(b) Enter into any contract or agreement with him or with a business organization under his control which involves the operations of a corporate licensee, without the prior approval of the executive director.

(c) Employ him in any position involving the activities of a corporate licensee without prior approval of the executive director.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 134, eff from and after passage (approved June 29, 1990).

Cross References — Application of provisions of §§ 75-76-199 through 75-76-265 to manufacturers, sellers or distributors of gaming devices, or exemption therefrom, see § 75-76-79.

Definitions applicable to this section, see § 75-76-199.

Authority of commission to impose on holding companies and intermediary companies more stringent requirements than the requirements imposed by this section, see § 75-76-235.

Requirement that publicly traded corporations comply with provisions of this section when exempted from the provisions of certain other sections, see § 75-76-249.

Authority of commission to impose on publicly traded corporations more stringent requirements than the requirements imposed by this section, see § 75-76-255.

PENALTIES

SEC.
75-76-267. Penalties for violation of Gaming Control Act.

§ 75-76-267. Penalties for violation of Gaming Control Act.

(1) Conviction by a court of competent jurisdiction of a person for a violation of, an attempt to violate, or a conspiracy to violate any of the provisions of this chapter shall act as an immediate revocation of all licenses which have been issued to the violator, and, in addition, the court may, upon application of the district attorney of the county or of the commission, order that no new or additional license under this chapter be issued to the violator, or be issued to any person for the room or premises in which the violation occurred, for one (1) year after the date of the revocation.

(2) Any person who willfully fails to report, pay or truthfully account for and pay over any license fee or tax imposed by the provisions of this chapter, or willfully attempts in any manner to evade or defeat any such license fee, tax or payment thereof, shall be punished by commitment to the custody of the Department of Corrections for not less than one (1) year nor more than six (6) years, or by a fine of not more than Five Thousand Dollars ($5,000.00), or by both fine and imprisonment.

(3) Except as provided in subsection (4), any person who willfully violates, attempts to violate, or conspires to violate any of the provisions of subsection (1) of Section 75-76-57, shall be punished by commitment to the custody of the Department of Corrections for not less than one (1) year nor more than twenty (20) years, by a fine of not more than Fifty Thousand Dollars ($50,000.00), or by both fine and imprisonment.

(4) A licensee who puts additional games or slot machines into play or displays additional games or slot machines in a public area without first obtaining all required licenses and approval is subject only to the penalties provided in Sections 75-76-93 and 75-76-103 and in any applicable ordinance of the county or municipality.

(5) The violation of any of the provisions of this chapter, the penalty for which is not specifically fixed in this chapter, is a misdemeanor.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 135, eff from and after passage (approved June 29, 1990).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Constitutionality of statutes providing for destruction of gambling devices. 14 A.L.R.3d 366.

Am Jur. 38 Am. Jur. 2d, Gambling § 129 et seq.

CJS. 38 C.J.S., Gaming § 106 et seq.

FOREIGN GAMING

SEC.	
75-76-269.	Foreign gaming; definitions applicable to Sections 75-76-271 through 75-76-277.
75-76-271.	Approval required for involvement of licensee in foreign gaming; exceptions.
75-76-273.	Application for approval to participate in foreign gaming.
75-76-275.	Factors to be considered in decision to grant or deny approval to conduct foreign gaming operations; imposition of conditions of approval.
75-76-277.	Penalty for continued participation in foreign gaming operations after termination of approval.

§ 75-76-269. Foreign gaming; definitions applicable to Sections 75-76-271 through 75-76-277.

For the purposes of Sections 75-76-271 through 75-76-277:

(a) "Foreign gaming" means any gaming operations outside this state.

(b) "Licensee" means a person who:

(i) Is licensed or required to be licensed pursuant to Section 75-76-57 or 75-76-63; or

(ii) Is or is required to be licensed, registered or found suitable pursuant to Sections 75-76-199 through 75-76-265, inclusive; or

(iii) Directly or through one or more intermediaries controls, is controlled by or is under common control with a person described in subsection (i) or (ii).

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 136, eff from and after passage (approved June 29, 1990).

Cross References — Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-271.

§ 75-76-271. Approval required for involvement of licensee in foreign gaming; exceptions.

(1) Except as provided in subsections (2), (3) and (5), no licensee may be involved in foreign gaming without the prior approval of the commission, acting upon a recommendation of the executive director. Any approval granted under this section is a privilege which may be revoked, suspended, conditioned, limited or restricted by the commission at any time.

(2) The commission may, based on such factors as it deems relevant, grant preliminary approval to a licensee for involvement in foreign gaming. Any

preliminary approval granted pursuant to this subsection may be revoked, suspended, conditioned, limited or restricted by the commission at any time.

(3) Approval of the commission is not required if:

(a) The licensee does not own more than five percent (5%) beneficial interest in any class of securities of a corporation incorporated under the laws of any state of the United States which is a publicly traded corporation as defined in Section 75-76-199; and

(b) The licensee is not able to significantly control or influence the corporation.

(4) If it finds that approval is necessary to effectuate the purposes of this chapter, the commission may, by giving notice of its decision to the licensee, require that a licensee who is otherwise exempt under subsection (3) obtain approval as required by subsection (1).

(5) The commission may waive, either selectively or by general regulation, one or more of the requirements of Sections 75-76-269 through 75-76-277, inclusive, if it makes a written finding that the waiver is consistent with the public policy of this state concerning gaming.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 137, eff from and after passage (approved June 29, 1990).

Cross References — Definitions applicable to this section, see § 75-76-269.

§ 75-76-273. Application for approval to participate in foreign gaming.

(1) A licensee seeking approval to participate in foreign gaming shall apply to the executive director in writing, under oath, supplying any information and supporting data pertaining to himself and to the foreign gaming operations which the executive director and the commission require.

(2) A licensee who applies for approval agrees by his application to conduct his foreign gaming operations in accordance with the standards of honesty and integrity required for gaming activities in this state.

(3) The licensee shall submit data showing that the foreign gaming operations will be lawfully conducted in the foreign jurisdiction, and that the licensee's involvement will pose no unreasonable threat to gaming control in Mississippi.

(4) The executive director may conduct investigations concerning the application and submit recommendations to the commission. The executive director may require the applicant to pay anticipated costs of an investigation in advance, and shall refund overpayments and charge and collect amounts to cover underpayments of actual costs after the completion of the investigation.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 138, eff from and after passage (approved June 29, 1990).

Cross References — Definitions applicable to this section, see § 75-76-269.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-271.

§ 75-76-275. Factors to be considered in decision to grant or deny approval to conduct foreign gaming operations; imposition of conditions of approval.

(1) The executive director and the commission shall consider without limitation the following factors in deliberating the granting or denial of approval to conduct foreign gaming operations:

(a) The means, including agreements with foreign jurisdictions, for the commission and the executive director to obtain adequate access to information pertaining to the gaming operations in which the licensee seeks to be involved, and pertaining to any associate of the licensee in the foreign gaming operations.

(b) Assurance that the licensee and his associates in the foreign gaming operations will recognize and abide by the conditions and restrictions imposed upon approval of participation.

(c) Assurance that the right of Mississippi to collect license fees will be adequately protected through an effective accounting system designed to prevent the undetected employment of techniques to avoid payment.

(d) Assurance that the relationship of the licensee with any associate will pose no unreasonable threat to the interest of the State of Mississippi in regulating the gaming industry within the state.

(e) Other factors which are found to be relevant to the adequate protection of state-regulated gaming in Mississippi.

(2) The commission may impose conditions upon any approval of participation in foreign gaming operations, including without limitation:

(a) The continuation of any factor listed in subsection (1) or any other factor considered relevant by the commission.

(b) Requirements for internal accounting, administrative and managerial controls, including evidence of those controls to be filed with the commission or maintained in the principal office of the licensee in Mississippi and made available to the commission and the executive director and commission or their agents for examination and copying as requested.

(c) Requirements for reports found necessary by the executive director or the commission.

(d) Requirements for onsite audits to be conducted at the licensee's expense by independent certified public accountants, or their equivalent, who are acceptable to the executive director or the commission.

(e) Requirements for disclosure and reporting of changes in beneficial ownership or control of any interest in a foreign gaming operation, including interest of the licensee and of others.

(f) Requirements for onsite inspections at the expense of the licensee of foreign gaming operations by the executive director or the commission or their representatives.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 139, eff from and after passage (approved June 29, 1990).

Cross References — Definitions applicable to this section, see § 75-76-269.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-271.

§ 75-76-277. Penalty for continued participation in foreign gaming operations after termination of approval.

A licensee who continues participation in foreign gaming operations after an order of the commission terminating approval engages in an unsuitable method of operation and may be disciplined by the commission.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 140, eff from and after passage (approved June 29, 1990).

Cross References — Definitions applicable to this section, see § 75-76-269.

Authority of commission to waive requirements of this section if it makes certain written findings, see § 75-76-271.

TAXATION OF CRUISE VESSELS AND VESSELS

SEC.
75-76-279. Temporary exemption of cruise vessel or vessel licensed under Gaming Control Act from ad valorem taxes; Department of Revenue to recommend method of taxing cruise vessels and vessels.

§ 75-76-279. Temporary exemption of cruise vessel or vessel licensed under Gaming Control Act from ad valorem taxes; Department of Revenue to recommend method of taxing cruise vessels and vessels.

(1) From and after June 29, 1990, any cruise vessel or vessel which is licensed under the provisions of this chapter and which is used for gambling games, as determined by the Tax Commission, shall be exempt from all ad valorem taxes through June 30, 1991.

(2) On or before December 1, 1990, the State Tax Commission shall report to the Legislature its recommendation for an equitable method of imposing a tax upon the cruise vessels and vessels described in subsection (1).

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 153, eff from and after passage (approved June 29, 1990).

Editor's Note — Section 27-3-4 provides that the terms "State Tax Commission" and "Tax Commission" appearing in the laws of this state in connection with the performance of the duties and functions of the Mississippi State Tax Commission shall mean Department of Revenue.

ATTORNEY GENERAL OPINIONS

All property utilized in conjunction with gaming casinos is subject to ad valorem taxation in exactly the same manner as any other business property. Wetzel, June 25, 1992, A.G. Op. #92-0418.

OFFICIALS NOT TO DERIVE BENEFITS

SEC.
75-76-281. Officials not to derive benefit as result of duties under Gaming Control Act; penalties.

§ 75-76-281. Officials not to derive benefit as result of duties under Gaming Control Act; penalties.

No elected or appointed official shall derive any pecuniary benefit, directly or indirectly, other than compensation and any other benefits authorized by law, as a result of such elected or appointed official's duties under this chapter. Any person convicted of a violation of this section shall be punished pursuant to the provisions of Article 3, Chapter 4, Title 25, Mississippi Code of 1972.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 154, eff from and after passage (approved June 29, 1990).

Cross References — Members of Mississippi Gaming Commission not to put personal interest in conflict with that of commission, see § 75-76-9.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 75-76-281 does not prohibit Justice Court Judge from employment by gaming casino under job title of Marketing Consultant, where position of Consultant has following job description: "Solicitation for business from tour groups, local and regional hotels and motel restaurants, statewide associations and civic groups, having no authority to issue lines of credit or any duty that would have to do with the day to day operation of the casino". McAdams, May 5, 1993, A.G. Op. #93-0327.

Any person convicted of violation of Miss. Code Section 75-76-281 shall be punished pursuant to Miss. Code Section 25-4-31. McAdams, May 5, 1993, A.G. Op. #93-0327.

There is no explicit rule or statute prohibiting Gaming Commissioner or company owned by him from contracting with casino licensee or with contractor of casino licensee, although there would be question of whether Commissioner derived pecuniary benefit by virtue of his position. Irby, Feb. 10, 1994, A.G. Op. #93-0922.

ILLEGAL ACTIVITIES

SEC.
75-76-301. Particular unlawful activities.
75-76-303. Use or possession of certain devices at gaming establishment prohibited.
75-76-305. Use or manufacture of slugs or counterfeit chips or tokens prohibited; possession of certain devices prohibited.
75-76-307. Cheating prohibited.
75-76-309. Manufacture, sale or distribution of gaming materials intended for

illegal use prohibited; altering equipment prohibited; instructing others in cheating prohibited.
75-76-311. Additional penalties for violating Sections 75-76-301 through 75-76-313.
75-76-313. Questioning of person suspected of violating gaming provisions; immunity from suit for questioning.

§ 75-76-301. Particular unlawful activities.

It is unlawful for any person:

(a) To alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players.

(b) To place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or that is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome.

(c) To claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a gambling game, with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won.

(d) Knowingly to entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of this chapter, with the intent that the other person play or participate in the gambling game.

(e) To place or increase a bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet, including past-posting and pressing bets.

(f) To reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet, including pinching bets.

(g) To manipulate, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose for the component, including, but not limited to, varying the pull of the handle of a slot machine, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game.

SOURCES: Laws, 1993, ch. 488, § 2, eff from and after passage (approved April 20, 1993).

JUDICIAL DECISIONS

1. Intent to defraud.

In a prosecution under subsection (c), evidence was sufficient to show intent to defraud where (1) all parties conceded that fraud took place at a blackjack table, and the dealer himself admitted that he did, in fact, knowingly commit fraud against his casino, and (2) the dealer and the defendant were brothers-in-law, but testimony established that they both falsely represented that they were not even acquainted. Dumas v. State, 806 So. 2d 1009 (Miss. 2000).

§ 75-76-303. Use or possession of certain devices at gaming establishment prohibited.

It is unlawful for any person at a licensed gaming establishment to use, or possess with the intent to use, any device to assist:

(a) In projecting the outcome of the game;

(b) In keeping track of the cards played;

(c) In analyzing the probability of the occurrence of an event relating to the game; or

(d) In analyzing the strategy for playing or betting to be used in the game, except as permitted by the commission.

SOURCES: Laws, 1993, ch. 488, § 3, eff from and after passage (approved April 20, 1993).

§ 75-76-305. Use or manufacture of slugs or counterfeit chips or tokens prohibited; possession of certain devices prohibited.

(1) It is unlawful for any licensee, employee or other person to use counterfeit chips in a gambling game.

(2) It is unlawful for any person, in playing or using any gambling game designed to be played with, receive or be operated by chips or tokens approved by the commission or by lawful coins of the United States of America:

(a) Knowingly to use other than chips or tokens approved by the commission or lawful coins, legal tender of the United States of America, or to use coins not of the same denomination as the coins intended to be used in that gambling game; or

(b) To use any device or means to violate the provisions of this chapter.

(3) It is unlawful for any person, not a duly authorized employee of a licensee acting in furtherance of his employment within an establishment, to have on his person or in his possession on or off the premises of any licensed gaming establishment any device intended to be used to violate the provisions of this chapter.

(4) It is unlawful for any person, not a duly authorized employee of a licensee acting in furtherance of his employment within an establishment, to have on his person or in his possession on or off the premises of any licensed gaming establishment any key or device known to have been designed for the purpose of and suitable for opening, entering or affecting the operation of any gambling game, drop box or any electronic or mechanical device connected thereto, or for removing money or other contents therefrom.

(5) It is unlawful for any person to have on his person or in his possession any paraphernalia for manufacturing slugs. As used in this subsection, "paraphernalia for manufacturing slugs" means the equipment, products and

materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing or concealing a counterfeit facsimile of the chips or tokens approved by the commission or lawful coins of the United States, the use of which is unlawful pursuant to subsection (2) of this section. The term includes, but is not limited to:

(a) Metal or metal alloys;

(b) Molds, forms or similar equipment capable of producing a likeness of a gaming token or United States coin;

(c) Melting pots or other receptacles;

(d) Torches; and

(e) Tongs, trimming tools or other similar equipment.

(6) Possession of more than one (1) of the devices, equipment, products or materials described in this section permits a rebuttable inference that the possessor intended to use them for cheating.

SOURCES: Laws, 1993, ch. 488, § 4, eff from and after passage (approved April 20, 1993).

§ 75-76-307. Cheating prohibited.

It is unlawful for any person, whether he is an owner or employee of or a player in an establishment, to cheat at any gambling game.

SOURCES: Laws, 1993, ch. 488, § 5, eff from and after passage (approved April 20, 1993).

JUDICIAL DECISIONS

1. In general.

Defendant's conviction for conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO) arising from alleged scheme to defraud Mississippi casino did not violate ex post facto clause to extent that underlying offenses occurred prior to Mississippi's enactment of statutes that prohibited cheating at gambling games and marking or altering of gaming equipment or devices, given absence of showing that cheating at gambling was legal in Mississippi prior to statutes' enactment. United States v. Vaccaro, 115 F.3d 1211 (5th Cir. 1997), cert. denied, 522 U.S. 1047, 118 S. Ct. 689, 139 L. Ed. 2d 635 (1998).

Convictions for substantive Racketeer Influenced and Corrupt Organizations Act (RICO) violations were supported by evidence showing defendants' involvement in enterprise, that enterprise operated cheating scheme at Mississippi casino, and that defendants facilitated cheating, one by placing marked cards on table for play and other by organizing cheating crews. United States v. Vaccaro, 115 F.3d 1211 (5th Cir. 1997), cert. denied, 522 U.S. 1047, 118 S. Ct. 689, 139 L. Ed. 2d 635 (1998).

§ 75-76-309. Manufacture, sale or distribution of gaming materials intended for illegal use prohibited; altering equipment prohibited; instructing others in cheating prohibited.

(1) It is unlawful to manufacture, sell or distribute any cards, chips, dice, game or device that is intended to be used to violate any provision of this chapter.

(2) It is unlawful to mark, alter or otherwise modify any associated equipment or gaming device in a manner that:

(a) Affects the result of a wager by determining win or loss; or

(b) Alters the normal criteria of random selection, which affects the operation of a game or which determines the outcome of a game.

(3) It is unlawful for any person to instruct another in cheating or in the use of any device for that purpose, with the knowledge or intent that the information or use so conveyed may be employed to violate any provision of this chapter.

SOURCES: Laws, 1993, ch. 488, § 6, eff from and after passage (approved April 20, 1993).

JUDICIAL DECISIONS

1. In general.

Convictions for substantive Racketeer Influenced and Corrupt Organizations Act (RICO) violations were supported by evidence showing defendants' involvement in enterprise, that enterprise operated cheating scheme at Mississippi casino, and that defendants facilitated cheating, one by placing marked cards on table for play and other by organizing cheating crews. United States v. Vaccaro, 115 F.3d 1211 (5th Cir. 1997), cert. denied, 522 U.S. 1047, 118 S. Ct. 689, 139 L. Ed. 2d 635 (1998).

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§ 75-76-311. Additional penalties for violating Sections 75-76-301 through 75-76-313.

(1) In addition to any other penalty provided in this chapter, any person who violates any provision of Sections 75-76-301 through 75-76-313, shall be punished:

(a) For the first offense, by imprisonment in the State Penitentiary for not more than two (2) years, or by a fine of not more than Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

(b) For a second or subsequent violation of any of these provisions, by imprisonment in the State Penitentiary for not more than ten (10) years, and may be further punished by a fine of not more than Ten Thousand Dollars ($10,000.00).

(2) In addition to any other penalty provided in this chapter, any person who attempts, or two (2) or more persons who conspire, to violate any provision of Sections 75-76-301 through 75-76-313 each shall be punished by imposing the penalty provided in subsection (1) of this section for the completed crime, whether or not he personally played any gambling game or used any prohibited device.

SOURCES: Laws, 1993, ch. 488, § 7, eff from and after passage (approved April 20, 1993).

§ 75-76-313. Questioning of person suspected of violating gaming provisions; immunity from suit for questioning.

If any person shall commit or attempt to commit a violation of any provision of Sections 75-76-301 through 75-76-313, any officer, employee or agent of a licensee or any law enforcement officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may question such person in a reasonable manner for the purpose of ascertaining whether or not such person should be charged with a violation of Sections 75-76-301 through 75-76-313. The questioning of a person by an officer, employee or agent of a licensee or by a law enforcement officer shall not render the licensee, its officer, its employee or its agent, or a law enforcement officer, civilly liable for slander, false arrest, false imprisonment, malicious prosecution, unlawful detention or otherwise in any case where the licensee's officer, employee or agent, or the law enforcement officer, is acting in good faith and upon reasonable grounds to believe that the person questioned is committing or attempting to commit a violation of Sections 75-76-301 through 75-76-313.

SOURCES: Laws, 1993, ch. 488, § 8, eff from and after passage (approved April 20, 1993).

MISSISSIPPI GAMING COMMISSION FUND

Sec.
75-76-325. Mississippi Gaming Commission Fund created; use of funds; funding of agency expenses; deposit of monies into State General Fund.

§ 75-76-325. Mississippi Gaming Commission Fund created; use of funds; funding of agency expenses; deposit of monies into State General Fund.

(1) There is created in the State Treasury a special fund to be designated as the "Mississippi Gaming Commission Fund." The special fund shall consist of monies deposited therein under Section 75-76-81 and monies from any other source designated for deposit into the fund. Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State

General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund.

(2) Monies in the special fund may be used by the commission, upon appropriation by the Legislature, only for the purposes of carrying out the provisions of this chapter. Unexpended amounts remaining in the special fund at the end of a fiscal year shall be used by the commission in calculating the amounts of fees to be imposed under Section 75-76-33(2)(f) during the next succeeding state fiscal year that will be necessary to provide the commission with sufficient revenue, when combined with other monies deposited into the special fund, to carry out the provisions of this chapter without any state general funds.

(3) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(4) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

SOURCES: Laws, 2010, ch. 431, § 3; Laws, 2016, ch. 459, § 4, eff from and after July 1, 2016.

Editor's Note — Laws of 2010, ch. 431, § 4, effective March 24, 2010, provides:

"SECTION 4. The imposition and collection of any fees by the Mississippi Gaming Commission under Section 75-76-1 et seq. before the effective date of this act, the deposit of funds received from those fees into any fund in the State Treasury before the effective date of this act, and the expenditure of such funds before the effective date of this act are hereby ratified, approved and confirmed as being the proper method of imposition, collection, deposit and expenditure before the effective date of this act."

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes — The 2016 amendment added (3) and (4).

Cross References — Prohibition against one state agency charging another state agencies fees, etc., for services or resources received, see § 27-104-35.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-37.

CHAPTER 77

Repurchase of Inventories From Retailers Upon Termination of Contract

SEC.
75-77-1. Definitions.
75-77-2. Cancellation of retail agreement.
75-77-3. Supplier shall repurchase inventory maintained by retailer upon termination of contract.
75-77-4. Prohibited activities of supplier.
75-77-5. Repurchase price; costs of handling, packing and loading.
75-77-6. Rules for warranty claim submitted to supplier by retailer.
75-77-7. Transfer of title and right of possession to repurchased inventory.
75-77-9. Certain items need not be repurchased.
75-77-11. Civil liability for failure or refusal to repurchase.
75-77-13. Rights of heirs of retailer.
75-77-15. Security interests in inventory unaffected; repurchases not subject to bulk sales law; inspection of parts packed for shipment.
75-77-16. Cause of action for civil relief against supplier.
75-77-17. Contracts affected.
75-77-19. Chapter provisions are not waivable; severability.

§ 75-77-1. Definitions.

For the purposes of this chapter the following words and phrases have the following meanings unless the context otherwise requires:

(a) "Current model" means a model listed in the wholesaler's, manufacturer's or distributor's current sales manual or any supplements thereto;

(b) "Current net price" means the price listed in the supplier's price list or catalogue in effect at the time the contract is cancelled or discontinued, less any applicable trade and cash discounts;

(c) "Retailer" means any person, firm or corporation engaged in the business of selling and retailing farm implements, machinery, utility and industrial equipment, outdoor power equipment, all-terrain vehicles, off-road utility vehicles, attachments or repair parts and shall not include retailers of petroleum products;

(d) "Inventory" means farm implements, machinery, utility and industrial equipment, consumer products, outdoor power equipment, attachments and repair parts;

(e) "Supplier" means any manufacturer, wholesaler, wholesale distributor, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidations, any receiver or assignee, or any trustee of the original manufacturer, wholesaler or distributor; and

(f) "Superseded parts" means any part that will provide the same function as a currently available part as of the date of cancellation.

SOURCES: Laws, 1977, ch. 419, § 1; Laws, 1994, ch. 399, § 5; Laws, 1997, ch. 318, § 1; Laws, 2013, ch. 457, § 1, eff from and after passage (approved March 25, 2013.)

Cross References — "Good cause" defined, see § 75-77-2.

§ 75-77-2. Cancellation of retail agreement.

(1) No supplier, directly or through an officer, agent or employee, may terminate, cancel, fail to renew or substantially change the competitive circumstances of a retail agreement without good cause. "Good cause" shall mean failure by a retailer to comply with requirements imposed upon the retailer by the retail agreement if such requirements are not different from those imposed on other retailers similarly situated in this state. In addition, good cause exists whenever:

(a) There has been a closeout on sale of a substantial part of the retailer's assets related to the equipment business, or there has been a commencement of a dissolution or liquidation of the retailer;

(b) The retailer has changed its principal place of business or added additional locations without prior approval of the supplier, which shall not be unreasonably withheld;

(c) The retailer has substantially defaulted under a chattel mortgage or other security agreement between the retailer and the supplier, or there has been a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier;

(d) The equipment retailer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned the business;

(e) The retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and the supplier;

(f) The retailer transfers an interest in the dealership, or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership. However, good cause does not exist if the supplier consents to an action described in this subsection.

(2) Except as otherwise provided herein, a supplier shall provide a retailer with at least ninety (90) days written notice of termination, cancellation or nonrenewal of the retail agreement and a sixty (60) day right-to-cure the deficiency. If the deficiency is cured within the allotted time, the notice is void. In the case where cancellation is enacted due to market penetration, a reasonable period of time shall have existed where the supplier has worked with the dealer to gain the desired market share. The notice shall state all reasons constituting good cause for action. The notice is not required if the reason for termination, cancellation or nonrenewal is a violation under the provisions of subsection (1) of this section.

SOURCES: Laws, 1997, ch. 318, § 2, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 62B Am. Jur. 2d, Private Franchise Contracts § 586.

§ 75-77-3. Supplier shall repurchase inventory maintained by retailer upon termination of contract.

Whenever any retailer enters into an agreement, evidenced by a written or oral contract, with a supplier wherein the retailer agrees to maintain an inventory of parts and to provide service and the contract is terminated, then the supplier shall repurchase the inventory as provided in this chapter. The retailer may keep the inventory if he desires. If the retailer has any outstanding debts to the supplier, then the repurchase amount may be setoff or credited to the retailer's account.

SOURCES: Laws, 1977, ch. 419, § 2; Laws, 1997, ch. 318, § 3, eff from and after July 1, 1997.

RESEARCH REFERENCES

ALR. Damages for wrongful termination of franchise other than automobile dealership contracts. 40 A.L.R.5th 57.

Am Jur. 32 Am. Jur. 2d, Factors and Commission Merchants §§ 11, 20.

62B Am. Jur. 2d, Private Franchise Contracts § 7.

4A Am. Jur. Legal Forms 2d, Business Franchises § 50:41 (optional provision of franchise agreement as to rights of franchisor termination to purchase equipment).

CJS. 35 C.J.S., Factors § 43.

§ 75-77-4. Prohibited activities of supplier.

No supplier shall:

(a) Coerce any retailer to accept delivery of equipment, parts or accessories which the retailer has not ordered voluntarily, except as required by any applicable law, or unless parts or accessories are safety parts or accessories required by a supplier;

(b) Condition the sale of additional equipment to a retailer on a requirement that the retailer also purchase other goods or services, except that a supplier may require the retailer to purchase those parts reasonably necessary to maintain the quality of operation in the field of the equipment used in the trade area;

(c) Coerce a retailer into refusing to purchase equipment manufactured by another supplier;

(d) Terminate, cancel or fail to renew or substantially change the competitive circumstances of the retail agreement based on the results of a natural disaster, including a sustained drought or high unemployment in the dealership market area, labor dispute or other similar circumstances beyond the retailer's control.

SOURCES: Laws, 1997, ch. 318, § 4, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 62B Am. Jur. 2d, Private Franchise Contracts § 486.

§ 75-77-5. Repurchase price; costs of handling, packing and loading.

The supplier shall repurchase that inventory previously purchased from him and held by the retailer on the date of termination of the contract. The supplier shall pay one hundred percent (100%) of the current net price of all new, unsold, undamaged and complete farm implements, machinery, utility and industrial equipment, outdoor power equipment and attachments, and ninety percent (90%) of the current net price on new, unused and undamaged and superseded repair parts. The supplier shall pay the retailer ten percent (10%) of the current net price on all new, unused and undamaged repair parts returned to cover the cost of handling, packing and loading. The supplier shall have the option of performing the handling, packing and loading in lieu of paying the ten percent (10%) for these services. The supplier shall purchase at its amortized value any specific data processing hardware and software and telecommunications equipment that the supplier required the retailer to purchase within the past five (5) years. The supplier shall also repurchase, at seventy-five percent (75%) of the net cost, specialized repair tools purchased in the previous three (3) years and, at fifty percent (50%) of the net cost, specialized repair tools purchased in the previous four (4) through six (6) years pursuant to the requirements of the supplier and held by the retailer on the date of termination. Such specialized repair tools must be unique to the supplier's product line and must be in complete and resalable condition. Farm implements, machinery, utility and industrial equipment and outdoor power equipment used in demonstrations, including equipment leased primarily for demonstration or lease, shall also be subject to repurchase under this law at its agreed depreciated value, provided such equipment is in new condition and has not been abused.

SOURCES: Laws, 1977, ch. 419, § 3; Laws, 1994, ch. 399, § 6; Laws, 1997, ch. 318, § 5, eff from and after July 1, 1997.

§ 75-77-6. Rules for warranty claim submitted to supplier by retailer.

This section applies to a warranty claim submitted by a retailer:

(a) Claims filed for payment under warranty agreements shall either be approved or disapproved within thirty (30) days of receipt by the supplier. All claims for payment shall be paid within thirty (30) days of their approval. When any such claim is disapproved, the supplier shall notify the retailer within thirty (30) days stating the specific grounds upon which the disapproval is based. If a claim is not specifically disapproved within thirty (30) days of receipt, it shall be deemed approved and payment by the supplier shall be within thirty (30) days.

(b) If after termination of a contract the retailer submits a claim to the supplier for warranty work performed prior to the effective date of the termination, the supplier shall accept or reject the claim within thirty (30) days of receipt.

(c) Warranty work performed by the retailer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions thereof, multiplied by the retailer's established customer hourly retail labor rate, which shall have previously been made known to the supplier.

(d) Expenses expressly excluded under the supplier's warranty to the customer shall not be included nor required to be paid on requests for compensation from the retailer for warrant work performed.

(e) All parts used by the retailer in performing warranty work shall be paid to the retailer in the amount equal to the retailer's net price for parts used, plus a minimum of fifteen percent (15%). The percentage additive is to reimburse the retailer for reasonable costs of doing business in performing warranty service on the suppliers behalf, including, but not limited to, freight and handling costs incurred.

(f) The supplier has the right to adjust for errors discovered during audit, and if necessary, to adjust claims paid in error.

(g) The retailer shall have the right to accept the manufacturer's reimbursement terms and conditions in lieu of the provisions of this section.

SOURCES: Laws, 2001, ch. 495, § 37, eff from and after Jan. 1, 2002.

§ 75-77-7. Transfer of title and right of possession to repurchased inventory.

Upon payment of the repurchase amount to the retailer, the title and right of possession to the repurchased inventory shall transfer to the supplier. Annually, at the end of each calendar year, after termination or cancellation, the retailer's reserve account for recourse, retail sale or lease contracts shall not be debited by a supplier or lender for any deficiency unless the retailer or his heirs have been given at least seven (7) business days' notice by registered U.S. mail, return receipt requested, of any proposed sale of the equipment financed and an opportunity to purchase the equipment. The former retailer or his heirs shall be given quarterly status reports on any remaining outstanding recourse contracts. As the recourse contracts are reduced, any reserve account funds shall be returned to the retailer or his heirs in direct proportion to the liabilities outstanding.

SOURCES: Laws, 1977, ch. 419, § 4; Laws, 1997, ch. 318, § 6, eff from and after July 1, 1997.

§ 75-77-9. Certain items need not be repurchased.

The provisions of this chapter shall not require the repurchase from a retailer of:

(a) Any repair part which, because of its condition, is not resalable as a new part;

(b) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(c) Any farm implements, machinery, utility and industrial equipment, outdoor power equipment, all-terrain vehicles, off-road utility vehicles and attachments which are not current models or which are not in new, unused, undamaged, complete condition, provided that the equipment used in demonstrations or leased as provided in Section 75-77-5 shall be considered new and unused;

(d) Any repair parts which are not in new, unused, undamaged condition;

(e) Any farm implements, machinery, utility and industrial equipment, outdoor power equipment, all-terrain vehicles, off-road utility vehicles or attachments which were purchased more than thirty-six (36) months prior to notice of termination of the contract;

(f) Any inventory which was ordered by the retailer on or after the date of termination of the contract.

SOURCES: Laws, 1977, ch. 419, § 5; Laws, 1994, ch. 399, § 7; Laws, 1997, ch. 318, § 7; Laws, 2013, ch. 457, § 2, eff from and after passage (approved March 25, 2013.)

§ 75-77-11. Civil liability for failure or refusal to repurchase.

If any supplier shall fail or refuse to repurchase and pay the retailer for any inventory covered under the provisions of this chapter within sixty (60) days after shipment of such inventory, he shall be civilly liable for one hundred percent (100%) of the current net price of the inventory, plus any freight charges paid by the retailer, the retailer's attorney's fees, court costs and interest on the current net price computed at the legal interest rate from the sixty-first day after date of shipment.

SOURCES: Laws, 1977, ch. 419, § 6; Laws, 1997, ch. 318, § 8, eff from and after July 1, 1997.

§ 75-77-13. Rights of heirs of retailer.

(1) In the event of the death of the retailer or the majority stockholder of a corporation operating as a retailer, the supplier shall, at the option of the heir or heirs, repurchase the inventory from the heir or heirs of the retailer or majority stockholder as if the supplier had terminated the contract. The heir or heirs shall have one (1) year from the date of the death of the retailer or majority stockholder to exercise their options under this chapter. Nothing in

this chapter shall require the repurchase of any inventory if the heir or heirs and the supplier enter into a new contract retail agreement to operate the retail dealership.

(2) A supplier shall have ninety (90) days in which to consider and make a determination on a request by a family member to enter into a new retail agreement to operate the retail dealership. As used herein "family member" means a spouse, child, son-in-law, daughter-in-law or lineal descendant of the dealer or principal owner of the dealership. In the event the supplier determines that the requesting family member is not acceptable, the supplier shall provide the family member with a written notice of its determination with the stated reasons for non-acceptance. This section does not entitle an heir, personal representative or family member to operate a dealership without the specific written consent of the supplier.

(3) Notwithstanding the foregoing, in the event that a supplier and a dealer have previously executed an agreement concerning succession rights prior to the dealer's death and, if such agreement has not been revoked, such agreement shall be observed even if it designates someone other than the surviving spouse or heirs of the decedent as the successor.

SOURCES: Laws, 1977, ch. 419, § 7; Laws, 1997, ch. 318, § 9, eff from and after July 1, 1997.

§ 75-77-15. Security interests in inventory unaffected; repurchases not subject to bulk sales law; inspection of parts packed for shipment.

The provisions of this chapter shall not be construed to affect in any way any security interest which the supplier may have in the inventory of the retailer, and any repurchase hereunder shall not be subject to the provisions of the bulk sales law. The retailer and supplier shall furnish representatives to inspect all parts and certify their acceptability when packed for shipment. Failure of the supplier to provide a representative within sixty (60) days shall result in automatic acceptance by the supplier of all returned items.

SOURCES: Laws, 1977, ch. 419, § 8; Laws, 1997, ch. 318, § 10, eff from and after July 1, 1997.

§ 75-77-16. Cause of action for civil relief against supplier.

(1) A retailer may bring an action for civil damages in a court of competent jurisdiction against any supplier found violating any of the provisions of Sections 75-77-1 through 75-77-15, Mississippi Code of 1972, and may recover damages sustained as a consequence of the supplier's violations together with all costs and attorney fees.

(2) The retailer shall be entitled to injunctive relief against unlawful termination, cancellation, nonrenewal or substantial change of competitive circumstances of the retail agreement. The remedies in this section are in addition to any other remedies permitted by law.

SOURCES: Laws, ch. 318, § 11, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 62B Am. Jur. 2d, Private Franchise Contracts § 486.

§ 75-77-17. Contracts affected.

The provisions of this chapter shall apply to all contracts and shall apply to all retail agreements in effect which have no expiration date and are a continuing contract, and shall apply to all other contracts entered into, amended, extended, ratified or renewed after March 30, 1977. The provisions of this chapter shall apply to and be binding upon all suppliers, all successors in interest or purchasers of assets or stock of suppliers, and all receivers, trustees or assignees of suppliers. Any contractual term restricting the procedural or substantive rights of a retailer under this chapter, including a choice of law or choice of forum clause, is void.

SOURCES: Laws, 1977, ch. 419, § 9; Laws, 1983, ch. 397; Laws, 1997, ch. 318, § 12, eff from and after July 1, 1997.

§ 75-77-19. Chapter provisions are not waivable; severability.

(1) Except as otherwise provided in Section 75-77-6, the provisions of this chapter shall not be waivable in any contract, and any such attempted waiver shall be null and void.

(2) If any provision or item of this chapter or the application thereof is held invalid, it shall not affect other provisions, items or applications of this chapter which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this chapter are hereby declared severable.

SOURCES: Laws, 1977, ch. 419, § 10; Laws, 1997, ch. 318, § 12; Laws, 2001, ch. 495, § 38, eff from and after Jan. 1, 2002.

CHAPTER 79

Pulpwood Scaling and Practices

Sec.
75-79-1. Short title.
75-79-3. Purpose.
75-79-5. Definitions.
75-79-7. General powers and duties of commissioner of agriculture and commerce.
75-79-9. License required for pulpwood receiving facility.
75-79-11. Application for license.
75-79-13. License fee.
75-79-15. Issuance of license; contents; display.
75-79-17. Loss or destruction of license; replacement; fee.
75-79-19. Penalty for operating without license.
75-79-21. Denial, suspension, cancellation or revocation of license; grounds; procedure.
75-79-22. Repealed.
75-79-23. Licensee is responsible for acts of his employees.
75-79-25. Chapter not to restrict free dealing.
75-79-27. Inspection of pulpwood receiving facilities and equipment.
75-79-29. Subpoena powers; oaths and affirmations; enforcement; penalty.
75-79-31. Investigation of alleged violation.
75-79-33. Repealed.

§ 75-79-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Uniform Pulpwood Scaling and Practices Act."

SOURCES: Laws, 1982, ch. 317, § 1, eff from and after July 1, 1982.

RESEARCH REFERENCES

Am Jur. 12A Am. Jur. Legal Forms 2d, Logs and Timber § 168:109 (agreement; sale of pulpwood).

§ 75-79-3. Purpose.

The purpose of this chapter is to insure that acceptable standards are applied uniformly in the scaling of pulpwood throughout the State of Mississippi.

SOURCES: Laws, 1982, ch. 317, § 2, eff from and after July 1, 1982.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 75-79-5. Definitions.

The following words and phrases, as used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context or subject matter otherwise requires:

(a) "Person" means any individual, firm, copartnership, association, corporation, receiver, trustee, legal representative, organization or any other group or combination acting as a unit.

(b) "Commissioner" means the Mississippi Commissioner of Agriculture and Commerce.

(c) "Pulpwood" means any timber product delivered to a receiving facility in short-length form, eight (8) feet or less, and intended for use as a raw material in the manufacture of pulp and pulp products.

(d) "Pulpwood cutter-hauler" or "cutter-hauler" means any person engaging in or continuing to engage in this state in the business of severing and carrying pulpwood.

(e) "Pulpwood receiving facility" or "facility" means any woodyard, pulpmill or other place of business at which pulpwood is received from pulpwood cutter-haulers as herein defined in the regular course of business.

(f) "Facility operator" means any person who owns, operates or manages a pulpwood receiving facility as herein defined. Provided, however, that any landowner who shall pay employees an hourly wage to both cut and collect pulpwood on his private property shall not be deemed a facility operator under the provisions of this chapter.

SOURCES: Laws, 1982, ch. 317, § 3, eff from and after July 1, 1982.

Cross References — Commissioner of agriculture and commerce, generally, see § 69-1-1 et seq.

Penalty for unlicensed operation of pulpwood receiving facility, as defined in this section, see § 75-79-19.

§ 75-79-7. General powers and duties of commissioner of agriculture and commerce.

It shall be the function and duty of the commissioner to:

(a) Issue licenses to operators of pulpwood receiving facilities determined to qualify under the provisions of this chapter, and revoke or suspend licenses previously issued by the commissioner in any case where the licensee is determined to have violated any of the provisions of this chapter.

(b) Establish standard procedures and promulgate regulations for the measurement of pulpwood offered for sale, both by weight and by volume, in a manner consistent with the Mississippi Weights and Measures Law of 1964, as amended (Section 75-27-1 et seq.). Such standard provisions and regulations shall require that all pulpwood receiving facilities shall give every cutter-hauler a ticket which shall state at the minimum (i) the name of the cutter-hauler; (ii) the name of the landowner from which the wood was severed or the name of the owner of the timber; (iii) the county or county code in which the timber was severed; and (iv) the number of cords or, in the event of weighing, the gross weight on the truck of the cutter-hauler. In the event that neither the cutter-hauler nor the landowner nor the owner of the timber is the person to be paid for such pulpwood, the ticket shall also contain the name of the payee. The ticket shall be prepared upon delivery and acceptance of a load of pulpwood and shall be made available for inspection by the cutter-hauler if the cutter-hauler so desires. All cutter-haulers have the right to inspect the ticket before unloading of the pulpwood. However, where such wood is measured on scales, the ticket shall be issued at the time of the weighing and shall state the gross weight of the wood and truck and the tare weight of the truck after unloading to determine the net weight of the wood; the number of cords is not required on tickets so weighed. The pulpwood facility shall keep a copy of such ticket on file for subsequent inspection by the State Tax Commission and the Department of Agriculture and Commerce for a period not less than three (3) years. The facility operator shall maintain on the facility premises, at a minimum, the following information on the cutter-hauler and the payee for the pulpwood if the payee is someone other than the cutter-hauler: (i) name; (ii) social security number or employer identification number, or both; (iii) address; and (iv) the corresponding identification code used on the scale ticket. The facility operator is required to obtain, in good faith, such information from the cutter-hauler who is liable for the accuracy of this information.

(c) Conduct periodic inspections no less than once every six (6) months, and establish and carry out other procedures designed to insure that licensees will comply with the provisions of this chapter.

(d) Receive, investigate and take appropriate action with respect to any charge or complaint filed with the commissioner to the effect that any pulpwood receiving facility operator has violated any provision of this chapter.

(e) Randomly weigh, at his discretion, any agricultural product being delivered throughout the state to determine the accuracy of the bill of lading. If the weight exceeds or falls below the amount of weight reported on the bill of lading by five percent (5%) or more, then the commissioner shall report the discrepancy, in writing, to the Director of the Agriculture and Livestock Theft Bureau. Such agricultural products shall be weighed on certified scales approved by the Weights and Measures Division of the Department of Agriculture and Commerce.

SOURCES: Laws, 1982, ch. 317, § 4; Laws, 1994, ch. 575, § 1; reenacted, Laws, 1995, ch. 465, § 1; reenacted, Laws, 1997, ch. 322, § 1; reenacted without change, Laws, 2000, ch. 509, § 1; reenacted without change, Laws, 2004, ch. 423, § 1, eff from and after July 1, 2004.

Editor's Note — Laws of 1997, ch. 322, § 4 provides as follows:

"SECTION 4. Section 4, Chapter 575, Laws of 1994, which repeals Sections 75-79-7, 75-79-13 and 75-79-21, Mississippi Code of 1972, is repealed."

Section 27-3-4 provides that the term "State Tax Commission" appearing in the laws of this state in connection with the performance of the duties and functions of the Mississippi State Tax Commission shall mean Department of Revenue.

Cross References — Department of Revenue, generally, see § 27-3-1 et seq.

Department and commissioner of agriculture and commerce, generally, see § 69-1-1 et seq.

ATTORNEY GENERAL OPINIONS

Fees assessed in Miss. Code Section 75-79-7(b) are treated as sales tax in Miss. Code Section 75-79-33. Ross, Apr. 22, 1993, A.G. Op. #93-0252.

RESEARCH REFERENCES

Am Jur. 12A Am. Jur. Legal Forms 2d, Logs and Timber § 168:109 (agreement; sale of pulpwood).

§ 75-79-9. License required for pulpwood receiving facility.

No person shall engage in the business of operating a pulpwood receiving facility as defined in this chapter without having first obtained a license pursuant to this chapter.

SOURCES: Laws, 1982, ch. 317, § 5(1), eff from and after July 1, 1982.

Cross References — Definition of pulpwood receiving facility, see § 75-79-5.

§ 75-79-11. Application for license.

Applications for licenses under this chapter shall be made in writing, under oath, on forms prescribed by the commissioner for each separate pulpwood receiving facility. The application shall contain the name of the applicant, the address of the pulpwood receiving facility for which the license is to be issued, the name or names of the owners thereof and such further information as the commissioner, by regulation, requires. Provided, however, no financial statement shall be required.

SOURCES: Laws, 1982, ch. 317, § 5(2), eff from and after July 1, 1982.

§ 75-79-13. License fee.

The license fee for each calendar year or part thereof shall be Thirty Dollars ($30.00) for each pulpwood receiving facility operated within the state. A renewal of the license may be accomplished by submitting the payment of the annual fee and a certification, on a form provided by the commissioner, that none of the information on the original license application has changed.

SOURCES: Laws, 1982, ch. 317, § 5(3); Laws, 1994, ch. 575, § 2; reenacted, Laws, 1995, ch. 465, § 2; reenacted, Laws, 1997, ch. 322, § 2; reenacted without

change, Laws, 2000, ch. 509, § 2; reenacted without change, Laws, 2004, ch. 423, § 2, eff from and after July 1, 2004.

Editor's Note — Laws of 1997, ch. 322, § 4 provides as follows:

"SECTION 4. Section 4, Chapter 575, Laws of 1994, which repeals Sections 75-79-7, 75-79-13 and 75-79-21, Mississippi Code of 1972, is repealed."

§ 75-79-15. Issuance of license; contents; display.

Upon the filing of an application and the payment of the required fee, the commissioner shall issue a license to the applicant to operate a pulpwood receiving facility under and in accordance with the provisions of this chapter for a period which shall expire the last day of December next following the date of its issuance.

Each license shall specify the location of the facility for which it is issued and must be conspicuously displayed there.

SOURCES: Laws, 1982, ch. 317, § 5(4), (5), eff from and after July 1, 1982.

§ 75-79-17. Loss or destruction of license; replacement; fee.

Upon the loss or destruction of a license issued to a pulpwood receiving facility operator, a duplicate thereof or a new license may be issued under the same number for a fee of two dollars ($2.00).

SOURCES: Laws, 1982, ch. 317, § 5(6), eff from and after July 1, 1982.

§ 75-79-19. Penalty for operating without license.

Any person who operates a pulpwood receiving facility as defined in Section 75-79-5 without a proper license shall upon a first conviction thereof be guilty of a misdemeanor and shall be punished by a fine of not less than three hundred dollars ($300.00) nor more than one thousand dollars ($1,000.00), and upon a second or subsequent conviction thereof, he shall be punished by a fine of not less than one thousand dollars ($1,000.00) nor more than five thousand dollars ($5,000.00).

SOURCES: Laws, 1982, ch. 317, § 6, eff from and after July 1, 1982.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 75-79-21. Denial, suspension, cancellation or revocation of license; grounds; procedure.

(1) The commissioner may deny an application for a license, or revoke or suspend a license after it has been granted, for any of the following reasons:

(a) Any material misstatement in the application for a license.

(b) Defrauding any pulpwood cutter-hauler in the measurement of pulpwood to the cutter-hauler's damage.

(c) Failure to maintain accurate weighing and measuring devices used in the measurement of pulpwood.

(d) Requiring a pulpwood cutter-hauler to deliver or transfer any quantity of pulpwood to the facility operator's control as a condition of the purchase or receipt thereof before the facility operator has notified the cutter-hauler of the total number of cords or the volume for which payment will be made. This does not include out-of-specification wood culled when discovered during unloading.

(e) Willful failure to apply standards established by law or by the commissioner in the measurement of pulpwood.

(f) Discriminating against a pulpwood cutter-hauler because the cutter-hauler has filed a complaint, given testimony or otherwise sought relief under this chapter.

(g) Any violation of the rules and regulations of the Mississippi Department of Agriculture and Commerce or violation of any other of the laws governing pulpwood scaling and practices.

(2) If a pulpwood receiving facility operator is convicted of any crime involving fraud under the provisions of this chapter, the commissioner, may, in his discretion, suspend, cancel or revoke the license of such operator.

(3) All proceedings for the suspension, cancellation or revocation of licenses shall be before the commissioner, and the proceedings shall be in accordance with rules and regulations which shall be adopted by the commissioner. No license shall be cancelled or revoked, except after a hearing before the commissioner, upon reasonable notice to the licensee and an opportunity to appear and defend. Whenever the commissioner suspends, cancels or revokes a license, he shall prepare an order so providing which shall state the reason or reasons for such suspension, cancellation or revocation. The order shall be sent by certified mail by the commissioner to the licensee at the address of the pulpwood receiving facility licensed. Within thirty (30) days after the mailing of the order, the licensee, if dissatisfied with the order of the commissioner, may appeal to the chancery court of the county in which the pulpwood receiving facility is located by filing a written notice of appeal alleging the pertinent facts upon which such appeal is grounded. At the time of the filing of the appeal, the appellant shall give a bond for costs conditioned upon his prosecution of the appeal without delay and payment of all costs assessed against him. Appeal may be with supersedeas and shall be subject to the provisions of Section 11-51-31.

(4) In case a license issued to a pulpwood receiving facility operator expires or is suspended, cancelled or revoked by the commissioner or his

designated representative, such license shall be immediately returned to the commissioner.

SOURCES: Laws, 1982, ch. 317, §§ 7(1), 8; Laws, 1994, ch. 575, § 3; reenacted, Laws, 1995, ch. 465, § 3; reenacted, Laws, 1997, ch. 322, § 3; reenacted without change, Laws, 2000, ch. 509, § 3; reenacted without change, Laws, 2004, ch. 423, § 3, eff from and after July 1, 2004.

Editor's Note — Laws of 1997, ch. 322, § 4 provides as follows:

"SECTION 4. Section 4, Chapter 575, Laws of 1994, which repeals Sections 75-79-7, 75-79-13 and 75-79-21, Mississippi Code of 1972, is repealed."

§ 75-79-22. Repealed.

Repealed by Laws, 2004, ch. 423, § 4, eff from and after July 1, 2004.

[Laws, 1997, ch. 322, § 5; Laws, 2000, ch. 509, § 4, eff from and after July 1, 2000]

Editor's Note — Former Section 75-79-22 contained a repealer for Sections 75-79-7 through 75-79-21.

§ 75-79-23. Licensee is responsible for acts of his employees.

Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of such acts retained the benefits, proceeds, profits or advantages accruing from such acts or otherwise ratified such acts.

SOURCES: Laws, 1982, ch. 317, § 7(2), eff from and after July 1, 1982.

§ 75-79-25. Chapter not to restrict free dealing.

Nothing in this chapter shall require any person to buy from or sell to any other person in any situation or transaction in which the persons would otherwise be free, in their discretion, to deal or not to deal one with the other.

SOURCES: Laws, 1982, ch. 317, § 7(3), eff from and after July 1, 1982.

§ 75-79-27. Inspection of pulpwood receiving facilities and equipment.

Every pulpwood receiving facility and all such devices as are used there for the weighing or measuring of pulpwood shall be inspected periodically by the commissioner to insure compliance with this chapter. The commissioner may make such additional investigations and examinations of any licensee or other person as he deems necessary to determine compliance with this chapter. Such investigations and examinations may be made on the basis of a complaint filed with the commissioner or on his own initiative. For such purposes the commissioner may examine all scales tickets involving the buying and selling of pulpwood.

SOURCES: Laws, 1982, ch. 317, § 9(1), eff from and after July 1, 1982.

§ 75-79-29. Subpoena powers; oaths and affirmations; enforcement; penalty.

The commissioner shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which it has jurisdiction, control or supervision pertaining to this chapter.

The commissioner or any agent designated by him, may administer oaths and affirmations, examine witnesses and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the state at any designated place of hearing.

If any person refuses to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge or the chancellor of the chancery court of the First Judicial District of Hinds County may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the court, for the witness to appear before the commissioner and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the court or the office of the clerk of such chancery court, the clerk shall issue process of subpoena, as directed, under the seal of the court, requiring the person to whom it is directed, to appear at the time and place therein designated.

If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the commissioner may apply to any judge or the chancellor of the chancery court of the First Judicial District of Hinds County for an attachment against such person, as for a contempt. The judge or chancellor, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff, constable or police officer, for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. The judge or chancellor shall have power to enforce obedience to such subpoena and the answering of any question, and the production of any evidence, that may be proper by imposition of a fine, not exceeding five hundred dollars ($500.00), or by imprisonment in the county jail, or by both imposition of a fine and imprisonment, and to compel such witness to pay the costs of such proceeding.

SOURCES: Laws, 1982, ch. 317, § 9(2)-(5), eff from and after July 1, 1982.

§ 75-79-31. Investigation of alleged violation.

If an investigation by the commissioner indicates probable cause for belief that a violation of law has occurred, the commissioner shall refer the complaint with any evidence gathered during the investigation to the agency or official charged with the administration of such law and to the district attorney having jurisdiction, with a recommendation that it be considered for presentation to the next grand jury, as well as any further recommendations for seeking civil remedies.

SOURCES: Laws, 1982, ch. 317, § 9(6), eff from and after July 1, 1982.

§ 75-79-33. Repealed.

Repealed by 1994, ch. 455, § 1, eff from and after July 1, 1994.

[Laws, 1982, ch. 317, § 10; Reenacted, Laws 1985, ch. 306, §§ 1, 2; Laws 1988, ch. 335, § 1]

Editor's Note — Former § 75-79-33 was entitled: Fee on pulpwood measured by volume; amount; collection and remittance; state tax commission to administer; application of administrative provisions of Sales Tax Law.

CHAPTER 81

Dance Studio Lessons

Sec.
75-81-101. Definitions.
75-81-103. Written contract; customer to receive copy.
75-81-105. Limitation on cost and term of contract.
75-81-107. Time for commencing performance; consumer's right to rescind; disclosure of hourly rates; bonding.
75-81-109. Assignment of contract; consumer's notes not to cut off consumer's defenses as to third party.
75-81-111. Registration with Division of Consumer Protection.
75-81-113. Refund on death or disability of consumer.
75-81-115. Relationship to other laws.
75-81-117. Certain contracts void as against public policy.
75-81-119. Private right of action; remedies; time within which dance studio may correct violations.
75-81-121. Bond or cash deposit as security; actions against dance studio and its surety.
75-81-123. Criminal penalties.
75-81-125. Exemptions.

§ 75-81-101. Definitions.

As used in this chapter, the term "contract for dance studio lessons and other services" means a contract for instruction in ballroom or other types of dancing, and includes lessons and other services, whether given to students individually or in groups.

SOURCES: Laws, 1985, ch. 484, § 1, eff from and after July 1, 1985.

Cross References — Consumer protection, generally, see § 75-24-1 et seq.

Exemption for dance studios that offer lessons exclusively to persons under age of 18, see § 75-81-125.

Regulation of health spas, see § 75-83-1 et seq.

RESEARCH REFERENCES

ALR. Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

CJS. 14A C.J.S. Clubs § 2.

§ 75-81-103. Written contract; customer to receive copy.

Every contract for dance studio lessons and other services shall be in writing and shall be subject to the provisions of this chapter. A copy of the written contract shall be given to the customer at the time the contract is signed.

SOURCES: Laws, 1985, ch. 484, § 2, eff from and after July 1, 1985.

Cross References — Definition of "contract for dance studio lessons and other services," see § 75-81-101.

Limitation on cost and term of contract, see § 75-81-105.

Disclosure of hourly rates and consumer's right to rescind, see § 75-81-107.

Prohibition of contracts providing for consumer to execute notes and for such notes to be transferrable to third parties not subject to consumer's defenses, see § 75-81-109.

Refund in case of consumer's death or disability, see § 75-81-113.

Unenforceability of contract which violates provisions of chapter, see § 75-81-117.

Consumer's private right of action for violation of chapter, see § 75-81-119.

Criminal penalties for violation of chapter, see § 75-81-123.

Federal Aspects — Federal Trade Commission Act, see 15 USCS § 41 et seq.

Sending of deceptive advertisements through United States mail, see 39 USCS § 3005.

RESEARCH REFERENCES

ALR. Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

§ 75-81-105. Limitation on cost and term of contract.

(1) No contract or series of contracts for dance studio lessons and other services shall require payment by the person receiving the lessons and other services or the use of the facilities exceeding Two Thousand Dollars ($2,000.00).

(2) No contract for dance studio lessons and other services shall require payments or financing by the buyer over a period in excess of twelve (12) months from the date the contract is entered into, nor shall the term of any such contract be measured by the life of the buyer.

(3) All contracts for dance studio lessons and other services which may be in effect between the same seller and the same buyer, the terms of which overlap for any period, shall be considered as one (1) contract for the purposes of this chapter.

SOURCES: Laws, 1985, ch. 484, § 3, eff from and after July 1, 1985.

Cross References — Definition of "contract for dance studio lessons and other services," see § 75-81-101.

Unenforceability of contract which violates provisions of chapter, see § 75-81-117.

Consumer's private right of action for violation of chapter, see § 75-81-119.

Criminal penalties for violation of chapter, see § 75-81-123.

RESEARCH REFERENCES

ALR. Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

CJS. 14A C.J.S. Clubs § 2.

§ 75-81-107. Time for commencing performance; consumer's right to rescind; disclosure of hourly rates; bonding.

(1) Every contract for dance studio lessons and other services shall provide that performance of the agreed upon lessons will begin within twelve (12) months from the date the contract is entered into.

(2) Every contract for dance studio lessons and other services shall further provide that such contract may be rescinded within five (5) business days after receipt of the contract by the customer by written notice to the other party at the address specified in the contract, and all monies paid pursuant to such contract shall be refunded within ten (10) days of receipt of the notice of rescission, subject to payment by the customer for dance studio lessons or other services received prior to rescission.

(3) Every contract for dance studio lessons and other services shall contain a written statement of the hourly rate charged for each type of lessons for which the student has contracted. If the contract includes dance studio lessons which are sold at different per-hour rates, the contract shall contain separate hourly rates for each different type of lessons sold. All other services for which the student has contracted which are not capable of a per-hour charge shall be set forth in writing in specific terms. Such statement shall be contained in the dance studio contract before the contract is signed by the buyer.

(4) Every dance studio subject to the provisions of this chapter shall include in every contract for dance studio lessons or other services a statement that the studio is bonded and that information concerning the bond may be obtained by writing to the office of the State Treasurer. If the studio has elected to make a cash deposit in lieu of procuring a bond, the contract shall contain a description of the cash deposit.

SOURCES: Laws, 1985, ch. 484, § 4, eff from and after July 1, 1985.

Cross References — Prohibition of contracts providing for consumer to execute notes and for such notes to be transferrable to third parties not subject to consumer's defenses, see § 75-81-109.

Disclosure of hourly rates in registration statement with Office of Consumer Protection, see § 75-81-111.

Unenforceability of contract which violates provisions of chapter, see § 75-81-117.

Consumer's private right of action for violation of chapter, see § 75-81-119.

Requirement that dance studio maintain bond, see § 75-81-121.

Criminal penalties for violation of chapter, see § 75-81-123.

RESEARCH REFERENCES

ALR. Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

§ 75-81-109. Assignment of contract; consumer's notes not to cut off consumer's defenses as to third party.

No contract for dance studio lessons and other services shall require or entail the execution of any note or series of notes by the buyer which, when separately negotiated, will cut off as to third parties any right of action or defense which the buyer may have against the seller. The contract shall not be assigned except with the written consent of the customer.

SOURCES: Laws, 1985, ch. 484, § 5, eff from and after July 1, 1985.

Cross References — Uniform Commercial Code provisions concerning rights of holder of negotiable instruments, see § 75-3-301 et seq.

Disclosure of hourly rates and consumer's right to rescind, see § 75-81-107.

Refund in case of consumer's death or disability, see § 75-81-113.

Unenforceability of contract which violates provisions of chapter, see § 75-81-117.

Consumer's private right of action for violation of chapter, see § 75-81-119.

RESEARCH REFERENCES

ALR. Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Fraud in the inducement and fraud in the factum as defenses under UCC § 3-305 against holder in due course. 78 A.L.R.3d 1020.

Construction and effect of Uniform Consumer Credit Code. 86 A.L.R.3d 317.

Finance company's liability in connection with consumer fraud practices of party selling goods or services. 18 A.L.R.4th 824.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

§ 75-81-111. Registration with Division of Consumer Protection.

Any person, corporation, partnership, association or group intending to open or operate a dance studio shall file a registration statement with the Attorney General's Division of Consumer Protection prior to the sale of any contracts for dance studio lessons. Such a registration statement shall contain the name and address of the dance studio; the names and addresses of the officers, directors and stockholders of the dance studio and its parent corporation, if such an entity exists; the types of available facilities; the approximate size of the facility measured in square feet; the types of contracts and lessons to be offered and their cost; and a full and complete disclosure of any completed or pending litigation initiated against the dance studio and any of its officers and directors within the last three (3) years.

SOURCES: Laws, 1985, ch. 484, § 6, eff from and after July 1, 1985.

Cross References — Office of Consumer Protection, see § 75-24-1 et seq.

Disclosure of hourly rates and consumer's right to rescind, see § 75-81-107.

Requirement that dance studio maintain bond, see § 75-81-121.

Criminal penalties for violation of chapter, see § 75-81-123.

Exemption for dance studios that offer lessons exclusively to persons under age of 18, see § 75-81-125.

RESEARCH REFERENCES

ALR. Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

§ 75-81-113. Refund on death or disability of consumer.

(1) Every contract for dance studio lessons and other services shall contain a clause providing that if, by reason of death or disability, the person agreeing to receive lessons and other services is unable to receive all lessons and other services for which he has contracted, he and his estate shall be relieved from the obligation of making payment for lessons and other services other than those received prior to death or the onset of disability, and that if he has prepaid any sum for lessons and other services so much of such sum as is allocable to lessons and other services he has not taken shall be promptly refunded to him or his representative.

(2) Notwithstanding the provisions of any contract to the contrary, whenever the contract price is payable in installments and the buyer is relieved from making further payments or entitled to a refund under this section, the buyer shall be entitled to receive a refund or refund credit of so much of the cash price as is allocable to the lessons or other services not actually received by the buyer. The refund of the finance charge shall be computed according to the "sum of the balances method," also known as the "Rule of 78."

SOURCES: Laws, 1985, ch. 484, § 7, eff from and after July 1, 1985.

Cross References — Prohibition of contracts providing for consumer to execute notes and for such notes to be transferrable to third parties not subject to consumer's defenses, see § 75-81-109.

Unenforceability of contract which violates provisions of chapter, see § 75-81-117.

Consumer's private right of action for violation of this chapter, see § 75-81-119.

Federal Aspects — Pending of deceptive advertisements through United States mail, see 39 USCS § 3005.

RESEARCH REFERENCES

ALR. Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

§ 75-81-115. Relationship to other laws.

The provisions of this chapter are not exclusive and do not relieve the parties or the contracts subject thereto from compliance with all other applicable provisions of law.

SOURCES: Laws, 1985, ch. 484, § 8, eff from and after July 1, 1985.

Cross References — Sales provisions of Uniform Commercial Code, see § 75-2-101 et seq.

Consumer protection, generally, see § 75-24-1 et seq.

RESEARCH REFERENCES

ALR. "Unconscionability" as ground for refusing enforcement of contract for sale of goods or agreement collateral thereto. 18 A.L.R.3d 1305.

Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

§ 75-81-117. Certain contracts void as against public policy.

(1) Any contract for dance studio lessons and other services which does not comply with the applicable provisions of this chapter shall be void and unenforceable as contrary to public policy.

(2) Any contract for dance studio lessons and other services entered into in reliance upon any willful and false, fraudulent, or misleading information, representation, notice or advertisement of the seller shall be void and unenforceable.

(3) Any waiver of the buyer of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

SOURCES: Laws, 1985, ch. 484, § 9, eff from and after July 1, 1985.

Cross References — Requirement that contract be in writing, see § 75-81-103.

Limitation on cost and term of contract, see § 75-81-105.

Consumer's right to rescind and disclosure of hourly rates, see § 75-81-107.

Consumer's rights upon assignment of contract or transfer of note, see § 75-81-109.

Consumer's right to refund on death or disability, see § 75-81-113.

Consumer's private right of action for violation of this chapter, see § 75-81-119.

Exemption for dance studios that offer lessons exclusively to persons under age of 18, see § 75-81-125.

RESEARCH REFERENCES

ALR. Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

§ 75-81-119. Private right of action; remedies; time within which dance studio may correct violations.

(1) Any person who suffers any ascertainable loss of money or property, either real or personal, as a result of fraud, dishonesty or the violation of the provisions of this chapter may bring an action in chancery court to recover actual and/or punitive damages. If the court finds that such a violation was committed, the court may award actual and/or punitive damages. In the event that damages are awarded under this section, the court shall award to the person bringing such action reasonable attorney's fees and costs. Upon a finding by the court that an action under this section was groundless and brought in bad faith or for purposes of harassment, the court may award to the defendant reasonable attorney's fees and costs.

(2) Notwithstanding the provisions of this chapter, any failure to comply with any provisions of this chapter may be corrected within thirty (30) days after the execution of the contract by the buyer, and, if so corrected, neither the seller nor the holder shall be subject to any penalty under this chapter, provided that any correction which increases any monthly payment, the number of payments, or the total amount due, must be concurred in, in writing, by the buyer. "Holder" includes the seller who acquires the contract, or, if the contract is purchased by a financing agency or other assignee, the financing agency or other assignee.

(3) This section shall not be deemed to prohibit the enforcement by any person of any right provided by this or any other law.

SOURCES: Laws, 1985, ch. 484, § 10, eff from and after July 1, 1985.

Cross References — Punitive damages, generally, see § 11-1-65.

Private right of action under consumer protection laws generally, see § 75-24-15.

Requirement that dance studio maintain bond, see § 75-81-121.

Criminal penalties for violation of chapter, see § 75-81-123.

Exemption for dance studios that offer lessons exclusively to persons under age of 18, see § 75-81-125.

RESEARCH REFERENCES

ALR. Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Consumer class actions based on fraud or misrepresentation. 53 A.L.R.3d 534.

Right of state, public official, or governmental entity to seek, or power of court to allow, restitution of fruits of consumer fraud, without specific statutory authorization. 55 A.L.R.3d 198.

Validity of express statutory grant of power to state to seek, or to court to grant, restitution of fruits of consumer fraud. 59 A.L.R.3d 1222.

Right to private action under state consumer protection act. 62 A.L.R.3d 169.

Fraud in connection with franchise or distributorship relationship. 64 A.L.R.3d 6.

Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Reasonableness of offer of settlement under deceptive trade practice and consumer protection acts. 90 A.L.R.3d 1350.

When statute of limitations commences to run on action under state deceptive trade practice or consumer protection acts. 18 A.L.R.4th 1340.

Award of attorney's fees in actions under state deceptive trade practice and consumer protection acts. 35 A.L.R.4th 12.

Standard of proof as to conduct underlying punitive damage awards — modern status. 58 A.L.R.4th 878.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

§ 75-81-121. Bond or cash deposit as security; actions against dance studio and its surety.

(1) Every dance studio shall maintain a bond issued by a surety company authorized to do business in this state. The principal sum of the bond shall be Ten Thousand Dollars ($10,000.00).

(2) A copy of such bond shall be filed with the office of the State Treasurer. If the person in whose name the bond is issued severs his relationship with the bonded dance studio, the new owner shall, as a condition of doing business, notify the office of the State Treasurer of the change of ownership and of proof of compliance with this chapter.

(3) The bond required by this section shall be in favor of the State of Mississippi for the benefit of any person who, after entering into a contract for dance studio lessons and other services with the dance studio, is damaged by fraud or dishonesty or failure to provide the services of the studio in performance of the contract. Any person claiming against the bond may maintain an action at law against the dance studio and the surety.

(4) The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided herein shall in no event exceed the amount of the bond.

(5) In lieu of furnishing the bond required by this section the dance studio may deposit with the office of the State Treasurer a cash deposit in a like amount. This cash deposit may be satisfied by any of the following:

(a) Certificates of deposit payable to the office of the State Treasurer issued by banks doing business in this state and insured by the Federal Deposit Insurance Corporation.

(b) Investment certificates or share accounts assigned to the office of the State Treasurer and issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation.

(c) Bearer bonds issued by the United States government or by this state.

(d) Cash deposited with the office of the State Treasurer.

SOURCES: Laws, 1985, ch. 484, § 11, eff from and after July 1, 1985.

Cross References — Requirement that contract contain statement that dance studio is bonded, see § 75-81-107.

Registration statement to be filed with Consumer Protection Office, see § 75-81-111.

Consumer's private right of action for violation of this chapter, see § 75-81-119.

Criminal penalties for violation of chapter, see § 75-81-123.

RESEARCH REFERENCES

ALR. Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

§ 75-81-123. Criminal penalties.

Any person who wilfully and knowingly violates the provisions of Section 75-81-103, 75-81-105, 75-81-107, 75-81-111, or 75-81-121, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding Two Thousand Dollars ($2,000.00) or by imprisonment in the county jail for not more than one (1) year, or both.

SOURCES: Laws, 1985, ch. 484, § 12, eff from and after July 1, 1985.

Cross References — Requirement that contract be in writing, see § 75-81-103.

Limitation on cost and term of contract, see § 75-81-105.

Consumer's right to rescind and disclosure of hourly rates, see § 75-81-107.

Registration with Office of Consumer Protection, see § 75-81-111.

Consumer's private right of action for violation of this chapter, see § 75-81-119.

Requirement that dance studio maintain bond, see § 75-81-121.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

§ 75-81-125. Exemptions.

The provisions of this chapter shall not apply to dance studios that offer lessons solely to persons under the age of eighteen (18) years or to contracts for dance studio lessons that provide for services solely to persons under the age of eighteen (18) years.

SOURCES: Laws, 1985, ch. 484, § 13, eff from and after July 1, 1985.

Cross References — Definition of "contract for dance studio lessons and other services," see § 75-81-101.

RESEARCH REFERENCES

ALR. Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Scope and exemptions of state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 399.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

CHAPTER 83

Health Spas

Sec.
75-83-1. Definitions.
75-83-3. Registration of health spa; bond required.
75-83-5. Contract with consumer; right to rescind; duration of contract; particular contracts unenforceable.
75-83-7. Comprehensive pricelist available to consumer; registration of pricelist.
75-83-9. Misrepresentations; private right of action; punitive damages; attorney's fees.
75-83-11. Relationship to other laws.
75-83-13. Criminal penalties.
75-83-15. Exemption from registration requirement.

§ 75-83-1. Definitions.

(a) "Health spa" means an establishment that provides for profit as one of its primary purposes, services or facilities which purport to improve the user's physical condition or appearance through weight control, exercise, dieting or a combination of these. The term includes, but is not limited to, establishments referred to by such terms as reducing salon, spa, exercise club, exercise gym, health studio, health club, weight control center or other similar terms.

The term "health spa" shall not include the following:

(i) Bona fide nonprofit organizations, including but not limited to the Young Men's Christian Association, Young Women's Christian Association or similar organizations whose functions as health spas are only incidental to the overall functions and purposes;

(ii) Any organization primarily operated for the purpose of teaching a particular form of self-defense such as judo or karate;

(iii) Any nonprofit public or private school, college or university; or

(iv) Any organization, business, establishment or person which does not offer a contract with a duration in excess of four (4) months.

(b) "Contract" means a written agreement by which one becomes a member of a health spa.

(c) "Member" means a status obtained by any person entitling him to the services or facilities of a health spa.

(d) "Seller" means the person, corporation, partnership, association or group engaged in the operation as defined in this section, and who offers for sale the right to use the facilities or the services of the health spa.

(e) "Facilities" means equipment, physical structures and other tangible property utilized by a health spa to conduct its business. The term includes, but is not limited to, saunas, whirlpool baths, gymnasiums, running tracks, swimming pools, shower areas and exercise equipment.

(f) "Services" means programs, plans, guidance or structures provided by health spas for health spa members. The term includes, but is not limited to, diet planning, exercise instruction, exercise programs and the structure of classes.

(g) "Prepayment" means any payment for services or the use of facilities made before the services or facilities are made available by the health spa. It is not a prepayment if a payment for services or the use of facilities is made on the same day the services or use of the facility is provided. Money or other consideration received by a health spa from a financial institution upon assignment or sale of a contract should be considered a prepayment to the extent the member is required to make prepayments to the finance institution pursuant to the contract.

SOURCES: Laws, 1985, ch. 496, § 1, eff from and after July 1, 1985.

Cross References — General prohibition of unfair or deceptive acts or practices, see § 75-24-5.

Regulation of home solicitation sales, see § 75-66-1 et seq.

Regulation of dance studios, see § 75-81-101 et seq.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

§ 75-83-3. Registration of health spa; bond required.

Any person, corporation, partnership, association or group intending to open or operate a health spa shall:

(a) File a registration statement with the Attorney General's Division of Consumer Protection prior to the sale of any memberships. Such a registration statement shall contain the name and address of the health spa; the names and addresses of the officers, directors and stockholders of the health spa and its parent corporation, if such an entity exists; the types of available facilities; approximate size of the health spa measured in square feet; the type of membership plans to be offered and their cost; and a full and complete disclosure of any completed or pending litigation initiated against the health spa and any of its officers and directors within the last three (3) years.

(b) Every health spa shall maintain a bond issued by a surety company authorized to do business in this state. The principal sum of the bond shall be Twenty-five Thousand Dollars ($25,000.00).

(c) A copy of such bond shall be filed with the Office of the State Treasurer. If the person in whose name the bond is issued severs his relationship with the bonded health spa, the new owner shall, as a condition of doing business, notify the Office of the State Treasurer of the change of ownership and of proof of compliance with this chapter.

(d) The bond required by this section shall be in favor of the State of Mississippi for the benefit of any person who, after entering into contract with a health spa, is damaged by fraud or dishonesty or failure to provide services of the health spa in performance of the contract. Any person claiming against the bondsman maintains an action at law against the health spa and surety.

(e) The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided herein shall in no event exceed the amount of the bond.

(f) In lieu of furnishing the bond required by this section, the health spa may deposit with the Office of the State Treasurer a cash deposit in a like amount. This cash deposit may be satisfied by any of the following:

(i) Certificates of deposit payable to the Office of the State Treasurer issued by banks doing business in this state and insured by the Federal Deposit Insurance Corporation.

(ii) Investment certificates or share accounts assigned to the Office of the State Treasurer and issued by a savings and loan association doing business in the state.

(iii) Bearer bonds issued by the United States Government or by this state.

(iv) Cash deposit with the Office of the State Treasurer.

SOURCES: Laws, 1985, ch. 496, § 2, eff from and after July 1, 1985.

Cross References — Definition of health spa for purposes of this chapter, see § 75-83-1.

Inapplicability of exemption provided by § 75-83-15 to the registration requirement imposed by § 75-83-3, where the duration of contract exceeds 12 months, see § 75-83-5.

Requirement that health spa maintain comprehensive price list and include such list with registration statement, see § 75-83-7.

Criminal penalties for violation of this chapter, see § 75-83-13.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, New Topic Service, Consumer and Borrower Protection § 178 et seq.

§ 75-83-5. Contract with consumer; right to rescind; duration of contract; particular contracts unenforceable.

(1) A fully completed copy of each contract shall be delivered to the buyer at the time the contract is signed. Every contract must constitute the entire agreement between the seller and the buyer, must be in writing and must be signed by the member.

(2) Each contract shall state in at least ten-point boldface type the following: NOTICE TO THE BUYER: DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ ALL OF IT. ALSO, DO NOT SIGN THIS CONTRACT IF IT CONTAINS ANY BLANK SPACES.

(3) Every purchaser of a membership shall be entitled to cancel his or her contract within five (5) business days by notifying the health spa in writing by midnight of the fifth business day following the date of purchase of the membership contract. Written notification is deemed given if mailed or

delivered by midnight of the fifth business day. All money collected pursuant to the contract shall be refunded to the purchaser exercising the right to cancel.

(4) Each contract shall contain the following notice in at least ten-point boldface type: IF WITHIN FIVE (5) BUSINESS DAYS YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER OF THIS HEALTH SPA, YOU MAY CANCEL THIS AGREEMENT BY MAILING A NOTICE TO THE HEALTH SPA BY MIDNIGHT OF THE FIFTH BUSINESS DAY FOLLOWING YOUR PURCHASE OF THE CONTRACT STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE WRITTEN NOTICE SHOULD BE MAILED TO THE FOLLOWING ADDRESS: (Insert address of the health spa).

(5) No health spa contract shall have a duration for a longer period than thirty-six (36) months; provided, however, that no health spa offering any contract for a longer period than twelve (12) months shall be exempt from the provisions of subsection (b) of Section 75-83-3, the provisions of Section 75-83-15 notwithstanding.

(6) Every contract for health spa services shall contain a clause providing that if, by reason of death or disability, the person agreeing to receive health spa services is unable to do so, he and his estate shall be relieved of the obligation of making payments for such services other than those received prior to death or the onset of the disability, and that if he has prepaid any sum for health spa services, the unexpired portion shall be promptly refunded to him or his representative.

(7) Any health spa contract which does not comply with the applicable provisions of this chapter shall be void and unenforceable as contrary to public policy.

(8) Any health spa contract entered into by the buyer upon any false or misleading information, representation, notice or advertisement of the health spa or the health spa's agent shall be void and unenforceable.

(9) Any waiver by the buyer of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

SOURCES: Laws, 1985, ch. 496, § 3; Laws, 1994, ch. 461, § 1, eff from and after July 1, 1994.

Cross References — General prohibition of unfair or deceptive acts or practices, see § 75-24-5.

Definition of health spa for purposes of this chapter, see § 75-83-1.

Requirement that health spa register with attorney general, see § 75-83-3.

Requirement that health spa maintain comprehensive price list and include such list with registration statement, see § 75-83-7.

Prohibition of misrepresentation by health spa and consumer's private right of action, see § 75-83-9.

Relationship between rights and obligations created by this chapter and other laws, see § 75-83-11.

Criminal penalties for violations of this chapter, see § 75-83-13.

Exemptions from registration requirement, see § 75-83-15.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of state legislation regulating or controlling "bait-and-switch" or "disparagement" advertising or sales practices. 50 A.L.R.3d 1008.

Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, New Topic Service, Consumer and Borrower Protection § 178 et seq.

CJS. 14A C.J.S. Clubs § 2.

§ 75-83-7. Comprehensive pricelist available to consumer; registration of pricelist.

(1) Each health spa doing business shall prepare a comprehensive list of all membership plans offered for sale by the health spa and the respective price of each plan. The list shall be shown to each prospective purchaser of a membership plan.

(2) A health spa is prohibited from selling a membership plan not included in this list and in the registration statement filed with the Attorney General's office; provided, however, that a reduction in the price of a plan shall not constitute a change requiring reregistration of the plan.

SOURCES: Laws, 1985, ch. 496, § 4, eff from and after July 1, 1985.

Cross References — General prohibition of unfair or deceptive acts or practices, see § 75-24-5.

Definition of health spa for purposes of this chapter, see § 75-83-1.

Requirement that health spa register with attorney general, see § 75-83-3.

Inapplicability of exemption provided by § 75-83-15 to the registration requirement imposed by § 75-83-3 where the duration of contract exceeds 12 months, see § 75-83-5.

Formal requirements of health spa's contract with consumer, consumer's right to rescind, and the unenforceability of particular contract provisions, see § 75-83-5.

Prohibition of misrepresentation by health spa and consumer's private right of action, see § 75-83-9.

RESEARCH REFERENCES

ALR. Validity and construction of statute or ordinance requiring or prohibiting posting or other publication of price of commodity or services. 89 A.L.R.2d 901.

Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Validity, construction, and effect of laws or regulations requiring merchants to affix sale price to each item of consumer goods. 7 A.L.R.4th 792.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, New Topic Service, Consumer and Borrower Protection § 178 et seq.

§ 75-83-9. Misrepresentations; private right of action; punitive damages; attorney's fees.

(1) Health spas shall be prohibited from making any material misrepresentations to current members, prospective members or purchasers of membership contract regarding:

(a) Qualifications of staff;

(b) Availability, quality, or extent of facilities or services;

(c) Results obtained through exercising, dieting or weight control programs;

(d) Rights of membership; or

(e) Period of time a discount or special offer will be available.

(2) Any person who suffers any ascertainable loss of money or property as a result of fraud, dishonesty or a violation of the provisions of this chapter may bring an action in chancery court to recover actual and/or punitive damages. If the court finds that such a violation was committed, the court may award actual and/or punitive damages. In the event the damages are awarded under this section, the court shall award to the person bringing such action reasonable attorney's fees and costs. Upon a finding by the court that an action under this section is groundless and brought in bad faith or for purposes of harassment, the court may award to the defendant reasonable attorney's fees and costs.

SOURCES: Laws, 1985, ch. 496, § 5, eff from and after July 1, 1985.

Cross References — Punitive damages, generally, see § 11-1-65.

General prohibition of unfair or deceptive acts or practices, see § 75-24-5.

Definition of health spa for purposes of this chapter, see § 75-83-1.

Action against health spa's sureties, see § 75-83-3.

Formal requirements of health spa's contract with consumer, consumer's right to rescind, and the unenforceability of particular contract provisions, see § 75-83-5.

Requirement that health spa maintain comprehensive price list and include such list with registration statement, see § 75-83-7.

Relationship between rights and obligations created by this chapter and other laws, see § 75-83-11.

Criminal penalties for violations of this chapter, see § 75-83-13.

RESEARCH REFERENCES

ALR. Consumer class actions based on fraud or misrepresentation. 53 A.L.R.3d 534.

Seller's liability for fraud in connection with contract for the sale of long-term dancing lessons. 28 A.L.R.3d 1412.

Right of state, public official, or governmental entity to seek, or power of court to allow, restitution of fruits of consumer fraud, without specific statutory authorization. 55 A.L.R.3d 198.

Validity of express statutory grant of power to state to seek, or to court to grant, restitution of fruits of consumer fraud. 59 A.L.R.3d 1222.

Right to private action under state consumer protection act. 62 A.L.R.3d 169.

Fraud in connection with franchise or

distributorship relationship. 64 A.L.R.3d 6.

Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Reasonableness of offer of settlement under deceptive trade practice and consumer protection acts. 90 A.L.R.3d 1350.

When statute of limitations begins to run on action under state deceptive trade practice or consumer protection acts. 18 A.L.R.4th 1340.

Award of attorney's fees in actions under state deceptive trade practice and consumer protection acts. 35 A.L.R.4th 12.

Standard of proof as to conduct underlying punitive damage awards—modern status. 58 A.L.R.4th 878.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Liability of proprietor of private gymnasium, reducing salon, or similar health club for injury to patron. 79 A.L.R.4th 127.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

21 Am. Jur. Pl & Pr Forms (Rev), Sales, Forms No. 91.6, 131.1.

35 Am. Jur. Proof of Facts 2d 255, false representation as to quality of character of product.

§ 75-83-11. Relationship to other laws.

The remedies in this chapter are in addition to and not in derogation of remedies available under any other provisions of law.

The provisions of this chapter are cumulative, supplemental and not exclusive and do not relieve the parties or the contract subjects thereto from compliance with all other applicable provisions of law.

SOURCES: Laws, 1985, ch. 496, § 6, eff from and after July 1, 1985.

Cross References — General prohibition of unfair or deceptive acts or practices, see § 75-24-5.

Formal requirements of health spa's contract with consumer, consumer's right to rescind, and the unenforceability of particular contract provisions, see § 75-83-5.

Prohibition of misrepresentation by health spa and consumer's private right of action, see § 75-83-9.

RESEARCH REFERENCES

ALR. "Unconscionability" as ground for refusing enforcement of contract for sale of goods or agreement collateral thereto. 18 A.L.R.3d 1305.

Scope and exemptions of state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 399.

Practices forbidden by state deceptive trade practice and consumer protection acts. 89 A.L.R.3d 449.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, New Topic Service, Consumer and Borrower Protection § 178 et seq.

CJS. 14A C.J.S. Clubs § 2.

§ 75-83-13. Criminal penalties.

Any person who knowingly and willingly violates the provisions of Section 75-83-3, 75-83-5 or 75-83-9 shall be guilty of a misdemeanor and shall be punished by a fine not exceeding Two Thousand Dollars ($2,000.00) or by imprisonment in the county jail for not more than one (1) year, or both.

SOURCES: Laws, 1985, ch. 496, § 7, eff from and after July 1, 1985.

Cross References — Requirement that health spa register with attorney general, see § 75-83-3.

Contracts with consumer, consumer's right to rescind, and invalidity of certain contract provisions, see § 75-83-5.

Requirement that health spa maintain comprehensive price list and include such list with registration statement, see § 75-83-7.

Prohibition of misrepresentation by health spa and consumer's private right of action, see § 75-83-9.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

CJS. 14A C.J.S. Clubs § 2.

§ 75-83-15. Exemption from registration requirement.

All health spas operating in the State of Mississippi prior to July 1, 1985, and which offer no contracts which have a duration for a period of longer than twelve (12) months, shall be exempt from the provisions of subsection (b) of Section 75-83-3.

SOURCES: Laws, 1985, ch. 496, § 8, eff from and after July 1, 1985.

Cross References — Requirement that health spa register with attorney general, see § 75-83-3.

Inapplicability of exemption provided by § 75-83-15 to the registration requirement imposed by § 75-83-3 where the duration of contract exceeds 12 months, see § 75-83-5.

Criminal penalties for violations of this chapter, see § 75-83-13.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 3.

17 Am. Jur. 2d, Consumer and Borrower Protection § 178 et seq.

CJS. 14A C.J.S. Clubs § 2.

CHAPTER 85

Transient Vendor

Sec.

75-85-1. Definitions.
75-85-3. Application of chapter.
75-85-5. License required for transient vendor to transact business.
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75-85-9. State tax commission to prepare necessary forms.
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75-85-15. Issuance of license; validity of license; renewal of license.
75-85-17. Posting of sales tax number, license number and statement concerning sales receipt; vendor to keep running total of sales.
75-85-19. Penalties for violation of chapter.

§ 75-85-1. Definitions.

As used in this chapter, the following terms shall have the following meanings ascribed to them, unless the context clearly indicates otherwise:

(a) "Transient vendor" means any person who transacts transient business in this state either in one locality or by traveling from place to place in this state. The term includes a vendor who for the purposes of carrying on such business hires, leases, uses or occupies any building, structure, motor vehicle, railroad car or real property.

(b) "Transient business" means any business conducted for the sale of merchandise or services that is carried on at a particular location for a period of less than six (6) months in each year, even though the owner of such business may conduct the business at another location for more than six (6) months in each year.

(c) "Person" means an individual, corporation, association, partnership or other entity.

SOURCES: Laws, 1988, ch. 581, § 1; Laws, 1994, ch. 522, § 3, eff from and after July 1, 1994.

Cross References — Authority of board of supervisors of any county to adopt ordinances for the regulation of transient vendors not inconsistent with the provisions of Sections 75-85-1 through 75-85-19, see § 19-3-83.

ATTORNEY GENERAL OPINIONS

Pursuant to Miss. Code Section 75-85-1 et seq., person who transacts business in city or county for less than six months in each year must obtain transient vendor's license, unless business is specifically exempted by Miss. Code Section 75-85-3. Fortenberry, Feb. 18, 1993, A.G. Op. #93-0082.

If these business are located within a City for a period of time less than six months out of the year, then a transient vendor's license is required under Section 75-85-1 et seq. If these businesses are located within the city for a period greater than six months out of the year, even if the specialized vending vehicles move around within the city, then no transient vendor's license is required. Polk, March 29, 1996, A.G. Op. #96-0128.

The owner of a permanent business located in Mississippi outside of the City of Ridgeland who transacts business at one or more locations in the City of Ridgeland for less than six months of the year is a transient vendor within the meaning of the statute. Mills, Dec. 10, 1999, A.G. Op. #99-0661.

RESEARCH REFERENCES

ALR. Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose. 14 A.L.R.3d 896.

Am Jur. 60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers §§ 1 et seq, 76 et seq.

Lawyers' Edition. Supreme Court's views as to constitutionality of state or municipal regulation of peddlers, drummers, canvassers, and the like. 48 L. Ed. 2d 917.

§ 75-85-3. Application of chapter.

(1) The provisions of this chapter shall not apply to:

(a) Civic and nonprofit organizations or wholesale sales to retail merchants by commercial travelers;

(b) Wholesale trade shows or conventions;

(c) Sales of goods, wares, services or merchandise by sample, catalogue or brochure for future delivery;

(d) Fairs and convention center activities conducted primarily for amusement or entertainment;

(e) Any general sale, fair, circus, auction or bazaar sponsored by a church or religious organization;

(f) Garage sales held on premises devoted to residential use;

(g) Sales or repairs of crafts or sales or repairs of items made by hand by the person making the crafts or items;

(h) Duly licensed flea markets operating from a fixed location;

(i) Sales of agricultural, dairy, poultry, seafood or forest management products or services related to forest management or silvicultural activities, nursery products, foliage plants or ornamental trees, except such products or services sold at retail and not grown or produced within Mississippi;

(j) Sales of agricultural services.

(2) A transient vendor not otherwise exempted from this chapter is not exempted from this chapter because of a temporary association with a local dealer, auctioneer, trader, contractor or merchant, or by conducting the transient business in connection with or in the name of any local dealer, auctioneer, trader, contractor or merchant.

SOURCES: Laws, 1988, ch. 581, § 2; Laws, 1989, ch. 561, § 1; Laws, 1992, ch. 399, § 1; Laws, 1994, ch. 522, § 4, eff from and after July 1, 1994.

Cross References — Authority of board of supervisors of any county to adopt ordinances for the regulation of transient vendors not inconsistent with the provisions of Sections 75-85-1 through 75-85-19, see § 19-3-83.

Authority of counties and municipalities to adopt ordinances for the regulation of transient vendors not inconsistent with this section, see § 21-19-35.

ATTORNEY GENERAL OPINIONS

Salesmen who travel from state to state selling books by sample or brochure for future delivery are exempt from transient vendor license. Mullins, June 14, 1991, A.G. Op. #91-0432.

A company which has a district office in Memphis and which sells dairy and food products by truck to individuals in Mississippi falls within the exemption from the transient vendors' license fees. Stanford, Nov. 14, 1991, A.G. Op. #91-0864.

Foreign corporation that sells cheese, crackers, gift baskets, candy, cakes, and processed meats at mall during holiday season must obtain transient vendor's license; corporation does not come under dairy products exemption because inventory includes items other than cheese. Johnson, Sept. 24, 1992, A.G. Op. #92-0737.

Miss. Code Section 75-85-3(d) specifically exempts, from transient vendor's license requirement, "fairs and convention center activities conducted primarily for amusement or entertainment"; whether specific business is "fair or convention center activity" is factual question; however, it does not appear that business consisting of carnival type rides, games and food stands used to promote grocery stores or shopping centers falls within conventional definition of "fair". Fortenberry, Feb. 18, 1993, A.G. Op. #93-0082.

Vendor who is transacting business for less than six months of year must obtain transient vendor's license unless falling within one of specific exclusions listed in Miss. Code Section 75-85-3. Duckworth, Apr. 21, 1993, A.G. Op. #93-0257.

Miss. Code Section 75-85-3 exempts vendor who has permanent place of business in Mississippi, Mississippi sales tax number, and privilege license. Duckworth, Apr. 21, 1993, A.G. Op. #93-0257.

If a vendor at the flea market is doing business for less than six months of the year, the vendor must obtain a transient vendor's license unless the business falls within a specific exemption set forth in Section 75-85-3, such as the exemption for sales of crafts or items made by hand set forth in Section 75-85-3(1)(g) or the exemption for agricultural products set forth in Section 75-85-3(1)(i). Johnson, November 8, 1996, A.G. Op. #96-0667.

A vendor who otherwise meets the definition of a transient vendor and who engages in the sale of prepared foods such as barbeque or hot tamales from a roadside stand, is not exempt from the requirement of a transient vendor license by Section 75-85-3(i), regardless of whether the final products are prepared with dairy, seafood or agricultural products grown in Mississippi. Joseph, Apr. 26, 2005, A.G. Op. #05-0195.

RESEARCH REFERENCES

ALR. Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose. 14 A.L.R.3d 896.

Am Jur. 60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers §§ 1 et seq; 76 et seq.

Lawyers' Edition. Supreme Court's views as to constitutionality of state or municipal regulation of peddlers, drummers, canvassers, and the like. 48 L. Ed. 2d 917.

§ 75-85-5. License required for transient vendor to transact business.

A transient vendor may not transact business in any county or municipality in this state unless the vendor, and the owner of the merchandise or provider of the services to be offered if the merchandise is not owned or the services are not provided by the vendor, has secured a license in accordance with this chapter and otherwise complied with this chapter.

SOURCES: Laws, 1988, ch. 581, § 3, eff from and after October 1, 1988.

Cross References — Authority of counties and municipalities to adopt ordinances for the regulation of transient vendors not inconsistent with this section, see §§ 19-3-83 and 21-19-35.

ATTORNEY GENERAL OPINIONS

Owner of fireworks business which is separate and distinct from permanent business must obtain transient vendor's license; transient vendor who transacts business at several locations in county outside municipality would have to obtain one license in county. Blackledge, July 2, 1992, A.G. Op. #92-0468.

RESEARCH REFERENCES

ALR. Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose. 14 A.L.R.3d 896.

Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks. 48 A.L.R.5th 659.

Am Jur. 60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers §§ 64 et seq.

Lawyers' Edition. Supreme Court's views as to constitutionality of state or municipal regulation of peddlers, drummers, canvassers, and the like. 48 L. Ed. 2d 917.

§ 75-85-7. Application for license.

(1) A transient vendor who desires to transact business in a county or municipality in this state shall apply for and obtain a license in each county and in each municipality in which the vendor desires to transact business. A license issued by a county authorizes a transient vendor to transact business outside of the municipalities in the county, and a license issued by a municipality authorizes a transient vendor to transact business within the municipality. The license application shall be filed with the county tax collector or municipal tax collector, as the case may be, and must include:

(a) The name and permanent address of the transient vendor making the application;

(b) A statement describing the kind of business to be conducted, the length of time for which the applicant desires to transact the business, and the proposed location of the business;

(c) The name and permanent address of the applicant's registered agent or office; and

(d) Proof that the applicant has acquired all other required city, county and state permits and licenses. Such proof shall include a Mississippi sales tax number and, if the transient vendor desires to transact business in a municipality, such number shall include such municipality's sales tax diversion code.

(2) If the applicant is an association or a corporation, the applicant must also include the names and addresses of the members of the association or the officers of the corporation. If the applicant is a corporation, the application must state the date of incorporation and the state in which it was incorporated. If the applicant is a corporation organized under the laws of another state, the applicant must state the date on which the corporation qualified to transact business as a foreign corporation in this state.

SOURCES: Laws, 1988, ch. 581, § 4; Laws, 1994, ch. 522, § 5, eff from and after July 1, 1994.

Cross References — Authority of board of supervisors of any county to adopt ordinances for the regulation of transient vendors not inconsistent with the provisions of Sections 75-85-1 through 75-85-19, see § 19-3-83.

Authority of counties and municipalities to adopt ordinances for the regulation of transient vendors not inconsistent with this section, see § 21-19-35.

ATTORNEY GENERAL OPINIONS

Pursuant to this section, a transient vendor who sets up several fireworks stands at different locations in the city should obtain only one transient vendor's license for the business of selling fireworks in the city. Norris, August 9, 1996, A.G. Op. #96-0506.

RESEARCH REFERENCES

ALR. Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose. 14 A.L.R.3d 896.

Am Jur. 60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers § 78.

14C Am. Jur. Legal Forms 2d, Peddlers, Solicitors, and Transient Dealers, § 198:21, 198:24, 198:30 (application for license or permit to peddle or solicit).

Lawyers' Edition. Supreme Court's views as to constitutionality of state or municipal regulation of peddlers, drummers, canvassers, and the like. 48 L. Ed. 2d 917.

§ 75-85-9. State tax commission to prepare necessary forms.

The State Tax Commission shall prepare uniform forms for license applications, license certificates and license renewals issued under this chapter.

SOURCES: Laws, 1988, ch. 581, § 5, eff from and after October 1, 1988.

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" appearing in the laws of this state in connection with the performance of the duties and functions of the Mississippi State Tax Commission shall mean Department of Revenue.

Cross References — Authority of counties and municipalities to adopt ordinances for the regulation of transient vendors not inconsistent with this section, see §§ 19-3-83 and 21-19-35.

RESEARCH REFERENCES

ALR. Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose. 14 A.L.R.3d 896.

Am Jur. 60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers § 78.

14C Am. Jur. Legal Forms 2d, Peddlers, Solicitors, and Transient Dealers, §§ 198:21, 198:24, 198:30 (application for license or permit to peddle or solicit).

Lawyers' Edition. Supreme Court's views as to constitutionality of state or municipal regulation of peddlers, drummers, canvassers, and the like. 48 L. Ed. 2d 917.

§ 75-85-11. Registered agent for transient vendor; tax collector as agent for service of process.

(1) Each applicant for a transient vendor license shall designate a registered agent on the license application. The registered agent must be a resident of the county or municipality for which the license is sought and shall be the agent on whom any process, notice or demand required or permitted by law to be served on the licensee may be served. The registered agent must agree in writing to act as the agent. The license applicant shall file a copy of the agreement with the license application.

(2) The county tax collector and the municipal tax collector shall maintain an alphabetical list of all transient vendors in the county or municipality, as the case may be, and the names and addresses of their registered agents.

(3) If a transient vendor who does business in a county or municipality fails to have or to maintain a registered agent in that county or municipality or if the designated registered agent cannot be found at the stated permanent address, the county tax collector or municipal tax collector, as the case may be, is the agent of the transient vendor for service of process, notices or demands. Service on the tax collector is made by delivering to his office duplicate copies of the process, notice or demand. If such a process, notice or demand is served on the tax collector, he shall immediately forward one (1) copy by registered or certified mail to the permanent address of the transient vendor.

(4) This section does not limit or otherwise affect the right of any person to serve a process, notice or demand in any other manner authorized by law.

SOURCES: Laws, 1988, ch. 581, § 6, eff from and after October 1, 1988.

Cross References — Authority of counties and municipalities to adopt ordinances for the regulation of transient vendors not inconsistent with this section, see §§ 19-3-83 and 21-19-35.

§ 75-85-13. License fee; bond requirements.

(1) Each applicant for a transient vendor license shall include a license fee set by the governing authority of the county or municipality not to exceed Two Hundred Fifty Dollars ($250.00) with the application, which fee shall be deposited in the general fund of the county or municipality that issues the license. The applicant shall also execute a cash bond or a surety bond issued by a corporate surety authorized to do business in this state in an amount that is the lesser of either Two Thousand Dollars ($2,000.00) or five percent (5%) of the wholesale value of any merchandise or service to be offered for sale by the applicant. The surety bond shall be issued in favor of the state and shall be conditioned upon payment of: (a) all taxes due from the applicant to the state or to a political subdivision of the state; (b) any fines assessed against the applicant or the applicant's agents or employees for a violation of this chapter; and (c) any judgment rendered against the applicant or the applicant's agents or employees in a cause of action commenced by a purchaser of merchandise or services not later than one (1) year after the date the merchandise or services were sold by the applicant.

(2) The transient vendor shall maintain the bond during the period that the vendor conducts business in the county or municipality and for a period of one (1) year after the termination of the business. After the transient vendor furnishes satisfactory proof to the county tax collector or municipal tax collector, as the case may be, that the vendor has satisfied all claims of purchasers of merchandise from or services offered by the vendor and that all sales taxes and other applicable taxes have been paid, the bond shall be released.

SOURCES: Laws, 1988, ch. 581, § 7; Laws, 1994, ch. 522, § 6, eff from and after July 1, 1994.

Cross References — Authority of board of supervisors of any county to adopt ordinances for the regulation of transient vendors not inconsistent with the provisions of §§ 75-85-1 through 75-85-19, see § 19-3-83.

Authority of counties and municipalities to adopt ordinances for the regulation of transient vendors not inconsistent with this section, see § 21-19-35.

Issuance, validity, and renewal of license, see § 75-85-15.

ATTORNEY GENERAL OPINIONS

The bond required by Section 75-85-13 is separate and distinct from the bond which may be imposed by either municipalities and/or counties under Sections 21-19-35 and 19-3-83, respectively; i.e., transient vendors must comply with any and all applicable statutes. Weems, July 25, 2006, A.G. Op. #06-0269.

RESEARCH REFERENCES

ALR. Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose. 14 A.L.R.3d

896.

Am Jur. 60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers §§ 78, 79.

Lawyers' Edition. Supreme Court's views as to constitutionality of state or municipal regulation of peddlers, drummers, canvassers, and the like. 48 L. Ed. 2d 917.

§ 75-85-15. Issuance of license; validity of license; renewal of license.

(1) The county tax collector and the municipal tax collector shall issue a transient vendor license under this chapter only if all requirements of this chapter have been met. The license is not transferable and is valid only within the territorial limits of the issuing county or municipality. A license expires ninety (90) days after the day of issuance.

(2) A license may be renewed on payment of a Twenty-five Dollar ($25.00) renewal fee and filing for renewal with the county tax collector or municipal tax collector, as the case may be, before the expiration of the current license. A license may be renewed only one (1) time after which a licensee must once again purchase a new license pursuant to the provisions of Section 75-85-13, Mississippi Code of 1972.

SOURCES: Laws, 1988, ch. 581, § 8; Laws, 1989, ch. 561, § 2, eff from and after passage (approved April 19, 1989).

Cross References — Authority of counties and municipalities to adopt ordinances for the regulation of transient vendors not inconsistent with this section, see §§ 19-3-83 and 21-19-35.

RESEARCH REFERENCES

ALR. Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose. 14 A.L.R.3d 896.

Am Jur. 60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers §§ 78-81.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

Lawyers' Edition. Supreme Court's views as to constitutionality of state or municipal regulation of peddlers, drummers, canvassers, and the like. 48 L. Ed. 2d 917.

§ 75-85-17. Posting of sales tax number, license number and statement concerning sales receipt; vendor to keep running total of sales.

While transacting his business, a transient vendor shall post in a prominent place, so that they may clearly be seen by purchasers of the merchandise or services which he is offering, his state sales tax number, his transient vendor license number, and a statement that he is required to give purchasers, at the time of payment, receipts for purchases that include sales tax. The postings required in this section shall be written in bold, legible letters and numbers not less than one (1) inch in height. The transient vendor shall keep a running total of his sales.

SOURCES: Laws, 1988, ch. 581, § 9, eff from and after October 1, 1988.

Cross References — Authority of counties and municipalities to adopt ordinances for the regulation of transient vendors not inconsistent with this section, see § 21-19-35.

JUDICIAL DECISIONS

I. Under Current Law.

1-5. [Reserved for future use.]

II. Under Former § 27-15-57.

6. In general.
7. Purpose.
8. Applicability.

I. Under Current Law.

1-5. [Reserved for future use.]

II. Under Former § 27-15-57.

6. In general.

Where a corporation pays an annual privilege tax to a city on account of operation of an ice cream factory in that city and as a result acquires the privilege of selling its manufactured goods at wholesale from refrigerated trucks, the corporation is not exempt from paying the transient vendor or dealer's tax to the state for selling its goods in other counties outside of that city. Stone v. Seale-Lily Ice Cream Co., 52 So. 2d 486 (Miss. 1951).

A dealer who maintained his main plant valued at more than $3000 in a certain county could be required to pay only $10 for each county wherein he sold fresh fruit and vegetables, even though sale and distribution in some counties was made from a branch plant assessed at less than $3000 to which produce was sent from the main plant for its better temporary preservation. Cockrell v. Rasberry, 202 Miss. 312, 32 So. 2d 119 (1947).

The opening sentence of this section 9649(1), Code 1942 (Laws 1940, ch 120), designating a tax on transient vendors as a "state-wide" tax, which under the fixed legislative policy would bar municipalities from collecting a part of the tax, the retention of an old provision that municipalities could also collect such a tax, and the enactment of another section at the concluding portion of the Act (see Code 1942, § 9694), expressly negativing the authority of municipalities to levy a tax on state-wide privilege taxes, resulted in a doubt as to the proper construction of the Act, which should be resolved in favor of the taxpayer, since taxation is never to be allowed under a statute of doubtful interpretation. Craig v. Walker, 191 Miss. 424, 2 So. 2d 806 (1941).

It being immaterial who pays a particular privilege tax so long as it is paid when due, it was immaterial that the formal recital of a privilege tax license issued under this statute was that it was issued to the employer firm or company for the agent named therein, instead of stating that it was issued to the agent himself and naming therein the firm or company for which he was thereby licensed to do the work. Craig v. Walker, 191 Miss. 424, 2 So. 2d 806 (1941).

Elimination of the word "natural" before the word "person" as contained in a former enactment of this section [§ 9649(1), Code 1942] is of no consequence, since the definitions of transient vendor in this and the former section are the same and restrict the term to persons who themselves actually peddle, or sell, or deliver goods, etc. Craig v. Brown & Williamson Tobacco Corp., 190 Miss. 360, 200 So. 446 (1941).

The liability for the privilege taxes imposed by former enactment of this section 9649(1), Code 1942 (Laws 1935, extra session, chap. 26, § 225; Laws 1936, chap. 154, § 225), was not upon a partnership engaged in the wholesale fruit and vegetable business but upon its agents, the drivers of its trucks, who actually peddled the produce. Gully v. Joseph, 183 Miss. 662, 184 So. 818 (1938).

7. Purpose.

This statute was designed to encourage dealers in fresh fruits and vegetables to establish built-in refrigeration plants in the state. Cockrell v. Rasberry, 202 Miss. 312, 32 So. 2d 119 (1947).

The purpose of this statute is that there should be a joint identification of the agent and his employer in the license, and this having been done, the state is not to be permitted to again collect the tax, with penalties, upon what at best is a technicality, unsupported by substantial merits, as where the tax is imposed upon the firm and the privilege licenses issued to it, naming the particular agent or transient vendor for whom the particular license was issued, instead of issuing the license to the agent or vendor himself. Craig v. Walker, 191 Miss. 424, 2 So. 2d 806 (1941).

8. Applicability.

This section applies only to the individual actually peddling the goods and not to the person by whom he is employed so to do; and, accordingly, a corporation being of itself unable to peddle goods, is not liable for the tax imposed hereunder. Craig v. Brown & Williamson Tobacco Corp., 190 Miss. 360, 200 So. 446 (1941).

§ 75-85-19. Penalties for violation of chapter.

Any person who knowingly or intentionally operates a transient business without a valid license as provided by this chapter or who knowingly or intentionally advertises, offers for sale, or sells any merchandise or services in violation of this chapter shall, upon conviction, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars ($500.00) or be imprisoned in the county jail not more than six (6) months, or be both fined and imprisoned. Such person may also be proceeded against by suit, and the tax collector may seize and sell any property of the person liable for the tax and penalty in the same manner as property of taxpayers delinquent for the payment of ad valorem taxes due on personal property may be distrained and sold.

SOURCES: Laws, 1988, ch. 581, § 10, eff from and after October 1, 1988.

Cross References — Authority of counties and municipalities to adopt ordinances for the regulation of transient vendors not inconsistent with this section, see §§ 19-3-83 and 21-19-35.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose. 14 A.L.R.3d 896.

Am Jur. 60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers §§ 82, 83.

Lawyers' Edition. Supreme Court's views as to constitutionality of state or municipal regulation of peddlers, drummers, canvassers, and the like. 48 L. Ed. 2d 917.

CHAPTER 87

Contracts Between Out-of-State Principals and Commissioned Sales Representatives

Sec.	
75-87-1.	Definitions.
75-87-3.	Sales representative contract to set forth means by which commissions shall be computed and paid.
75-87-5.	Commissions due and payable within 21 days of termination of sales representative's contract.
75-87-7.	Action to recover commissions; triple commissions; attorney fees.

§ 75-87-1. Definitions.

As used in this chapter:

(a) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the dollar amount of certain orders or sales.

(b) "Principal" means any person who does not have a permanent or fixed place of business in this state and who:

(i) Engages in the business of manufacturing, producing, importing or distributing a product or products for sale to customers who purchase such product or products for resale;

(ii) Utilizes sales representatives to solicit orders for such product or products; and

(iii) Compensates the sales representatives, in whole or in part, by commission.

(c) "Sales representative" means any person who engages in the business of soliciting, on behalf of a principal, orders for the purchase at wholesale of the product or products of the principal. The term "sales representative" shall not include a person who places orders or purchases for such person's own account for resale or is engaged in home solicitation sales regulated pursuant to Section 75-66-1 et seq., Mississippi Code of 1972.

SOURCES: Laws, 1988, ch. 588, § 1, eff from and after July 1, 1988, and it shall be applicable to contracts entered into after July 1, 1988.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (c). The reference to "Section 77-66-1" was changed to "Section 75-66-1." The Joint Committee ratified the correction at its December 3, 1996, meeting.

Editor's Note — Laws of 1988, ch. 588, § 5, provides as follows:

"SECTION 5. This act shall take effect and be in force from and after July 1, 1988, and it shall be applicable to contracts entered into after July 1, 1988."

§ 75-87-3. Sales representative contract to set forth means by which commissions shall be computed and paid.

Whenever any principal enters into an oral or written contract with a sales representative for services to be rendered within this state and the contemplated method of compensation of the sales representative involves a commission, the contract shall set forth the means by which the commission shall be computed and paid.

SOURCES: Laws, 1988, ch. 588, § 2, eff from and after July 1, 1988, and it shall be applicable to contracts entered into after July 1, 1988.

Editor's Note — Laws of 1988, ch. 588, § 5, provides as follows:

"SECTION 5. This act shall take effect and be in force from and after July 1, 1988, and it shall be applicable to contracts entered into after July 1, 1988."

RESEARCH REFERENCES

Am Jur. 27 Am. Jur. 2d, Employment Relationship §§ 53, 54.

48B Am. Jur. 2d, Labor and Labor Relations §§ 2987, 3031, 3046, 3188 et seq., 3129 et seq.

7A Am. Jur. Legal Forms 2d, Employment contracts § 99:92 (commissions payable on sales).

§ 75-87-5. Commissions due and payable within 21 days of termination of sales representative's contract.

Whenever the contract between a sales representative and any principal is terminated, all commissions due the sales representative by the principal shall be due and payable within twenty-one (21) days of such termination.

SOURCES: Laws, 1988, ch. 588, § 3, eff from and after July 1, 1988, and it shall be applicable to contracts entered into after July 1, 1988.

Editor's Note — Laws of 1988, ch. 588, § 5, provides as follows:

"SECTION 5. This act shall take effect and be in force from and after July 1, 1988, and it shall be applicable to contracts entered into after July 1, 1988."

Cross References — Sales representative's right to maintain civil action for triple the commissions due and attorney fees, see § 75-87-7.

RESEARCH REFERENCES

Am Jur. 27 Am. Jur. 2d, Employment Relationship §§ 53, 54.

48B Am. Jur. 2d, Labor and Labor Relations §§ 2987, 3031, 3046, 3188 et seq., 3129 et seq.

§ 75-87-7. Action to recover commissions; triple commissions; attorney fees.

Any principal who fails to timely pay the sales representative as provided in Section 75-87-5, shall be liable to the sales representative in a civil action for up to triple the commissions due to the sales representative, plus reasonable attorney's fees and costs.

SOURCES: Laws, 1988, ch. 588, § 4, eff from and after July 1, 1988, and it shall be applicable to contracts entered into after July 1, 1988.

Editor's Note — Laws of 1988, ch. 588, § 5, provides as follows:
"SECTION 5. This act shall take effect and be in force from and after July 1, 1988, and it shall be applicable to contracts entered into after July 1, 1988."
Cross References — Punitive damages, generally, see § 11-1-65.

RESEARCH REFERENCES

Am Jur. 27 Am. Jur. 2d, Employment Relationship §§ 53, 54.

48B Am. Jur. 2d, Labor and Labor Relations §§ 2987, 3031, 3046, 3188 et seq., 3129 et seq.

17 Am. Jur. Pl & Pr Forms (Rev), Master and Servant, Forms 72.1, 72.2.

CHAPTER 89

Mississippi Commodities Enforcement Act

Sec.

75-89-1. Short Title.
75-89-3. Definitions.
75-89-5. Commodity sale or purchase permitted only pursuant to Section 75-89-7 or 75-89-9.
75-89-7. Persons authorized to conduct commodity transactions.
75-89-9. Exempt transactions; qualified seller defined; requirements; waiver of requirements; authority of administrator to deny, suspend, revoke or place limitations on authority of, or exemption for, qualified seller; summary denial or suspension of exemption for qualified seller; rules, regulations and orders.
75-89-11. Requirements to engage in trade or business of commodity merchant.
75-89-13. Fraudulent or deceitful acts, false or misleading statements or reports, and the like prohibited.
75-89-15. Vicarious or agency liability.
75-89-17. Purpose and construction; no private rights or remedies created.
75-89-19. Investigation and enforcement by administrator; compulsion of testimony and other evidence.
75-89-21. Action by administrator to prevent, enjoin, and prosecute violations; administrative penalties.
75-89-23. Judicial measures to prevent, enjoin, and prosecute violations of Mississippi or other state's Commodity Act; special remedies; administrator need not post bond.
75-89-25. Penalties; period of limitations; institution of criminal proceedings.
75-89-27. Secretary of State to administer chapter; insider information; public and privileged information; subpoena of evidence.
75-89-29. Cooperation with like agencies in other jurisdictions.
75-89-31. Administrator may make, amend and rescind rules, forms and orders; publication of same; exemption from liability therefor.
75-89-33. Conduct violative of chapter or rule deemed appointment of administrator to accept service of process.
75-89-35. Applicability of certain provisions when purchase, sale, or offer to buy or sell is made in state; what constitutes purchase, sale, or offer to buy or sell in state.
75-89-37. Procedure for administrative proceedings; notice and hearing.
75-89-39. Judicial review of final orders.
75-89-41. Burden of proof as to exemptions.
75-89-43. Failure to make timely delivery not a violation when caused by factors beyond control of seller, seller's agents, etc.
75-89-45. Interpretative opinions; no-action determinations.

§ 75-89-1. Short Title.

This chapter shall be know and may be cited as the "Mississippi Commodities Enforcement Act."

SOURCES: Laws, 1993, ch. 319, § 1, eff from and after July 1, 1993.

RESEARCH REFERENCES

Am Jur. 73 Am. Jur. 2d, Stock and Commodity Exchanges §§ 1 et seq.

23 Am. Jur. Pl & Pr Forms (Rev), Stock and Commodity Exchanges §§ 1 et seq.

16B Am. Jur. Legal Forms 2d, Stock and Commodity Exchanges §§ 240.26 et seq. (futures transactions).

§ 75-89-3. Definitions.

As used in this chapter, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise:

(a) "Administrator" means the Secretary of State of Mississippi.

(b) "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange or other form of marketplace.

(c) "CFTC rule" means any rule, regulation or order of the Commodity Futures Trading Commission in effect on July 1, 1993, and all subsequent amendments, additions or other revisions thereto, unless the administrator, within thirty (30) days following the effective date of any such amendment, addition or revision, disallows the application thereof to this chapter or to any provision thereof by rule, regulation or order.

(d) "Commodity" means, except as otherwise specified by the administrator by rule, regulation or order, any agricultural, grain or livestock product or by-product, any metal or mineral, including a precious metal set forth in paragraph (m) of this section, any gem or gemstone, whether characterized as precious, semiprecious or otherwise, any fuel, whether liquid, gaseous or otherwise, any foreign currency, and all other goods, articles, products or items of any kind. "Commodity" shall not include:

(i) A numismatic coin whose fair market value is at least fifteen percent (15%) higher than the value of the metal it contains;

(ii) Real property or any timber, agricultural or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property;

(iii) Any work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner thereof; or

(iv) A "security" as that term is defined in Section 75-71-102(28) of the Mississippi Securities Act.

(e) "Commodity contract" means any account, agreement or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract or otherwise. Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. "Commodity contract" shall not include, except to the extent set forth in paragraph (1)(b) of Section 75-89-9, any contract or agreement which requires, and under which the purchaser receives, within twenty-eight (28) calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(f) "Commodity Exchange Act" means the act of Congress known as the Commodity Exchange Act, as amended prior to July 1, 1993, codified as 7 U.S.C.S., Section 1 et seq., and all subsequent amendments, additions of other revisions thereto, unless the administrator, within thirty (30) days following the effective date of any such amendment, addition or revision, disallows the application thereof to this chapter or to any provision thereof by rule, regulation or order.

(g) "Commodity Futures Trading Commission" or "CFTC" means the independent regulatory agency established by Congress to administer the Commodity Exchange Act.

(h) "Commodity merchant" means any of the following as defined or described in the Commodity Exchange Act or by CFTC rule:

(i) Futures commission merchant;
(ii) Commodity pool operator;
(iii) Commodity trading advisor;
(iv) Introducing broker;
(v) Leverage transaction merchant;
(vi) An associated person of any of the foregoing;
(vii) Floor broker; and
(viii) Any other person, other than a futures association, required to register with the Commodity Futures Trading Commission.

(i) "Commodity option" means any account, agreement or contract giving a party thereto the right but not the obligation to purchase or sell one or more commodities and/or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise. "Commodity contract" shall not include an option traded on a national securities exchange registered with the United States Securities and Exchange Commission.

(j) "Financial institution" means a bank, savings institution or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

(k) "Offer" includes every offer to sell, offer to purchase or offer to enter into a commodity contract or commodity option.

(*l*) "Person" means an individual, a corporation, a partnership, association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government. "Person" shall not include a contract market designated by the Commodity Futures Trading Commission or any clearinghouse thereof or a national securities exchange registered with the Securities and Exchange Commission or any employee, officer or director of such contract market, clearinghouse or exchange acting solely in that capacity.

(m) "Precious metal" means the following in either coin, bullion or other form:

(i) Silver;
(ii) Gold;
(iii) Platinum;
(iv) Palladium;
(v) Copper; and
(vi) Such other items as the administrator may specify by rule, regulation or order.

(n) "Sale" or "sell" includes every sale, contract of sale, contract to sell or disposition for value.

SOURCES: Laws, 1993, ch. 319, § 2, eff from and after July 1, 1993.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in paragraph (d)(iv) by substituting "Section 75-71-102(28)" for "Section 75-71-105(l)" The Joint Committee ratified the correction at its August 5, 2016, meeting.

Cross References — Failure to make delivery within time period specified in paragraph (e) of this section or in § 75-89-9(1)(b) not actionable under § 75-89-5 when failure due solely to factors beyond control of seller or seller's agents, etc., see § 75-89-43.

RESEARCH REFERENCES

ALR. Commodity futures contract or account as included in meaning of "security" as defined in § 3(a)(10) of Securities Exchange Act of 1934 (15 USCS § 78c(a)(10)). 58 A.L.R. Fed. 616.

§ 75-89-5. Commodity sale or purchase permitted only pursuant to Section 75-89-7 or 75-89-9.

Except as otherwise provided in Section 75-89-7 or Section 75-89-9, no person shall sell or purchase, or offer to sell or purchase, any commodity under any commodity contract or under any commodity option, or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

SOURCES: Laws, 1993, ch. 319, § 3, eff from and after July 1, 1993.

Cross References — General authority of administrator to make, amend and rescind rules, forms and orders, see § 75-89-31.

Failure to make delivery within time period specified in § 75-89-3(e) or § 75-89-9(1)(b) not actionable under this section when failure due solely to factors beyond control of seller or seller's agents, etc., see § 75-89-43.

Application of this section, see § 75-89-35.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state statutory provision prohibiting sales of commodities below cost-modern cases. 41 A.L.R.4th 612.

§ 75-89-7. Persons authorized to conduct commodity transactions.

The prohibitions in Section 75-89-5 shall not apply to any transaction offered by and in which any of the following persons, or any employee, officer or director thereof acting solely in that capacity, is the purchaser or seller:

(a) A person registered with the Commodity Futures Trading Commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration;

(b) A person registered with the Securities and Exchange Commission or registered under the laws of this state as a securities broker-dealer whose activities require such registration;

(c) A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in paragraph (a) or (b) of this section;

(d) A person who is a member of a contract market designated by the Commodity Futures Trading Commission or any clearinghouse thereof;

(e) A financial institution.

The exemption provided by this section shall not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC rule.

SOURCES: Laws, 1993, ch. 319, § 4, eff from and after July 1, 1993.

Federal Aspects — Commodity Exchange Act, 7 USCS § 1 et seq.

§ 75-89-9. Exempt transactions; qualified seller defined; requirements; waiver of requirements; authority of administrator to deny, suspend, revoke or place limitations on authority of, or exemption for, qualified seller; summary denial or suspension of exemption for qualified seller; rules, regulations and orders.

(1) The prohibitions in Section 75-89-5 shall not apply to the following:

(a) An account, agreement or transaction within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted under the Commodity Exchange Act;

(b) A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight (28) calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by such payment. Physical delivery shall be deemed to have occurred if, within such twenty-eight-day period, such quantity of precious metals purchased by such payment is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository, other than the seller, which is either:

(i) A financial institution;

(ii) A depository whose warehouse receipts are recognized for delivery purposes for any commodity on a contract market designated by the Commodity Futures Trading Commission;

(iii) A storage facility licensed or regulated by the United States or any agency thereof; or

(iv) A depository designated by the administrator; provided that such depository, or other person which itself qualifies as a depository as aforesaid, or a qualified seller, issues and the purchaser receives a certificate, document of title, confirmation or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

(c) A commodity contract or commodity option solely between persons engaged in producing, processing, using commercially or handling as merchants, each commodity subject thereto, or any by-product thereof;

(d) A commodity contract under which the offeree or the purchaser is a person referred to in Section 75-89-7, an insurance company, an investment company as defined in the Investment Company Act of 1940, or an employee pension and profit-sharing or benefit plan, other than a self-employed individual retirement plan or individual retirement account; or

(e) Any other transaction which the administrator by rule or order exempts from the prohibitions in Section 75-89-5 upon finding that such exemption is consistent with public interest and with the purpose fairly intended by the policy and provisions of this chapter.

(2) For the purposes of paragraph (1)(b) of this section, a qualified seller is a person who:

(a) Is a seller of precious metals and has a tangible net worth of at least Five Million Dollars ($5,000,000.00), or has an affiliate who has unconditionally guaranteed the obligations and liabilities of the seller and the affiliate has a tangible net worth of at least Five Million Dollars ($5,000,000.00); and

(b) Has stored precious metals with one or more depositories on behalf of customers for at least the previous three (3) years; and

(c) Prior to any offer, and annually thereafter, files with the administrator a sworn application to act as a qualified seller under paragraph (1)(b) of this section, containing:

(i) The seller's name and address, names of its directors, officers, controlling shareholders, partners, principals and other controlling persons;

(ii) The address of its principal place of business, state and date of incorporation or organization, and the name and address of seller's registered agent in this state;

(iii) A statement that the seller, or a person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, has a tangible net worth of at least Five Million Dollars ($5,000,000.00);

(iv) Depository information including the name and address of the depository or depositories that the seller intends to use, and the name and address of each and every depository where the seller has stored precious metals on behalf of customers for the previous three (3) years together with independent verification from each and every named depository that the seller has in fact stored precious metals on behalf of the seller's customers for the previous three (3) years and a statement of total deposits made during this period;

(v) Financial statements for the seller, or the person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, for the past three (3) years, audited by an independent certified public accountant together with the accountant's report;

(vi) A statement describing the details of all civil, criminal or administrative proceedings currently pending or adversely resolved against the seller or its directors, officers, controlling shareholders, partners, principals or other controlling persons during the past ten (10) years, including civil litigation and administrative proceedings involving securities or commodities violations or fraud; criminal proceedings; denials, suspensions or revocations of securities or commodities licenses or registrations; and suspensions or expulsions from membership in, or associations with, self-regulatory organizations registered under the Securities Exchange Act of 1934, or the Commodities Exchange Act; or a statement that there were no such proceedings; and

(d) Notifies the administrator within fifteen (15) days of any material changes in the information provided in the application; and

(e) Annually furnishes to each purchaser for whom the seller is then storing precious metals, and to the administrator, a report by an independent certified public accountant of the accountant's examination of the seller's precious metals storage program.

(3) The administrator may, upon request by the person seeking designation as a qualified seller, waive any of the exemption requirements in subsection (2) of this section, conditionally or unconditionally.

(4) The administrator may, by order, deny, suspend, revoke or place limitations on the authority to engage in business as a qualified seller under paragraph (1)(b) of this section if the administrator finds that the order is in the public interest and that the person, the person's officers, directors, partners, agents, servants or employees, any person occupying a similar status or performing similar functions, any person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates or subsidiaries:

(a) Has made a filing under subsection (2) of this section with the administrator or the designee of the administrator which was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Has, within the last ten (10) years, pled guilty or nolo contendere to, or been convicted of any crime indicating a lack of fitness to engage in the investment commodity business;

(c) Has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice which injunction indicates a lack of fitness to engage in the investment commodities business;

(d) Is the subject of an order of the administrator denying, suspending or revoking the person's license as a securities broker-dealer, securities broker-dealer agent, investment advisor or investment advisor representative;

(e) Is the subject of any of the following orders which are currently effective and which were issued within the last five (5) years:

(i) An order by the securities agency or administrator of another state, Canadian province or territory, the Securities and Exchange Commission or the Commodity Futures Trading Commission, entered after notice and opportunity for hearing, denying, suspending or revoking the person's registration as a futures commission merchant, commodity trading advisor, commodity pool operator, securities broker-dealer, securities broker-dealer agent, investment advisor, investment advisor representative or the substantial equivalent of those terms;

(ii) Suspension or expulsion from membership in, or association with, a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodity Exchange Act;

(iii) A United States Postal Service fraud order;

(iv) A cease and desist order entered after notice and opportunity of hearing by the administrator or the securities or commodities agency or administrator of any other state, Canadian province or territory, the Securities and Exchange Commission or the Commodity Futures Trading Commission;

(v) An order entered by the Commodity Futures Trading Commission denying, suspending or revoking registration under the Commodity Exchange Act;

(f) Has engaged in an unethical or dishonest act or practice in the investment commodities or securities business; or

(g) Has failed reasonably to supervise sales representatives or employees.

(5) If the public interest or the protection of investors so requires, the administrator may, by order, summarily deny or suspend the exemption for a qualified seller. Upon the entry of the order, the administrator shall promptly notify the party against whom the order has been entered that the order has

been entered and the reasons therefor. The administrator shall also inform the party against whom the order has been entered that a written request for a hearing on the matters set forth in the order must be filed with the administrator within thirty (30) days from receipt of a certified copy of the order. The provisions of Section 75-89-37 shall apply with respect to all subsequent proceedings.

(6) If the administrator finds that any applicant or qualified seller is no longer in existence or has ceased to do business or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or whose designated place of business cannot be located after reasonable search, the administrator may, by order, deny or revoke the exemption for a qualified seller.

(7) The administrator may issue rules, regulations or orders prescribing the terms and conditions of all transactions and contracts covered by the provisions of this chapter which are not within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted by the Commodity Exchange Act, exempting and conditionally or unconditionally or otherwise implementing the provisions of this chapter for the protection of purchasers and sellers of commodities.

SOURCES: Laws, 1993, ch. 319, § 5, eff from and after July 1, 1993.

Cross References — Burden of proof as to exemptions, see § 75-89-41.

Failure to make delivery within time period specified in paragraph (1)(b) of this section or in § 75-89-3(e) not actionable under § 75-89-5 when failure due solely to factors beyond control of seller or seller's agents, etc., see § 75-89-43.

Federal Aspects — Commodity Exchange Act, 7 USCS § 1 et seq.

Securities Exchange Act of 1934, 15 USCS § 78a et seq.

Investment Company Act of 1940, 15 USCS § 80(a)-1 et seq.

RESEARCH REFERENCES

ALR. Commodity futures contract or account as included in meaning of "security" as defined in § 3(a)(10) of Securities Exchange Act of 1934 (15 USCS § 78c(a)(10). 58 A.L.R. Fed. 616.

§ 75-89-11. Requirements to engage in trade or business of commodity merchant.

(1) No person shall engage in the trade or business of, or otherwise act as, a commodity merchant unless such person:

(a) Is registered or temporarily licensed with the Commodity Futures Trading Commission for each activity constituting such person as a commodity merchant and such registration or temporary license shall not have expired, nor been suspended nor revoked; or

(b) Is exempt from such registration by virtue of the Commodity Exchange Act or of a CFTC rule.

(2) No board of trade shall trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to

the rules of a contract market designated by the Commodity Futures Trading Commission unless such board of trade has been so designated for such commodity contract or commodity option and such designation shall not have been vacated, nor suspended nor revoked.

SOURCES: Laws, 1993, ch. 319, § 6, eff from and after July 1, 1993.

Cross References — Application of this section, see § 75-89-35.
Federal Aspects — Commodity Exchange Act, 7 USCS § 1 et seq.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

§ 75-89-13. Fraudulent or deceitful acts, false or misleading statements or reports, and the like prohibited.

No person, in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into any commodity contract or commodity option, shall directly or indirectly:

(a) Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme or artifice to defraud any other person;

(b) Make any false report, enter any false record or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

(c) Engage in any transaction, act, practice or course of business, including without limitation any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person; or

(d) Misappropriate or convert the funds, security or property of any other person.

SOURCES: Laws, 1993, ch. 319, § 7, eff from and after July 1, 1993.

Cross References — Application of this section, see § 75-89-35.

RESEARCH REFERENCES

ALR. Commodities broker's state-law duties to customers. 55 A.L.R.4th 394.

§ 75-89-15. Vicarious or agency liability.

(1) The act, omission or failure of any official, agent, or other person acting for any individual, association, partnership, corporation or trust within the scope of his employment or office shall be deemed the act, omission or failure

of such individual, association, partnership, corporation or trust, as well as of such official, agent or other person.

(2) Every person who directly or indirectly controls another person liable under any provision of this chapter, every partner, officer, or director of such other person, every person occupying a similar status or performing similar functions, every employee of such other person who materially aids in the violation is also liable jointly and severally with and to the same extent as such other person, unless the person who is also liable by virtue of this provision sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

SOURCES: Laws, 1993, ch. 319, § 8, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR. Commodities broker's state-law duties to customers. 55 A.L.R.4th 394.

§ 75-89-17. Purpose and construction; no private rights or remedies created.

This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and to maximize coordination with federal and other states' laws and the administration and enforcement thereof. This chapter is not intended to create any rights or remedies upon which actions may be brought by private persons against persons who violate the provisions of this chapter.

SOURCES: Laws, 1993, ch. 319, § 9, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR. Commodities broker's state-law duties to customers. 55 A.L.R.4th 394.

§ 75-89-19. Investigation and enforcement by administrator; compulsion of testimony and other evidence.

(1) The administrator may conduct investigations, within or without this state, as he finds necessary or appropriate to:

(a) Determine whether any person has violated, or is about to violate, any provision of this chapter or any rule or order of the administrator; or

(b) Aid in enforcement of this chapter.

(2) The administrator may publish information concerning any violation of this chapter or any rule or order of the administrator.

(3) For purposes of any investigation or proceeding under this chapter, the administrator or any officer or employee designated by rule or order, may

administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the administrator finds to be relevant or material to the inquiry.

(4)(a) If a person does not give testimony or produce the documents required by the administrator or a designated employee pursuant to an administrative subpoena, the administrator or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

(b) The request for order of compliance may be addressed to either:

(i) The Chancery Court of the First Judicial District of Hinds County, Mississippi, if the person is within this state; or

(ii) The appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

SOURCES: Laws, 1993, ch. 319, § 10, eff from and after July 1, 1993.

Cross References — Burden of proof as to exemptions, see § 75-89-41.

Information obtained in investigations pursuant to this section as exception to general rule making information collected, assembled, or maintained by administrator public information, see § 75-89-27.

§ 75-89-21. Action by administrator to prevent, enjoin, and prosecute violations; administrative penalties.

(1) If the administrator believes, whether or not based upon an investigation conducted under Section 75-89-19, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the administrator may seek any or all of the following remedies:

(a) Issue a cease and desist order with or without a prior hearing against the person(s) engaged in the prohibited activities, directing them to cease and desist from further illegal activity;

(b) Issue an order imposing an administrative penalty up to a maximum of Twenty-five Thousand Dollars ($25,000.00) for each offense and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings, to be paid to the administrator and requiring reimbursement to the administrator for all costs and expenses incurred in the investigation of the violation(s) and in the institution of administrative proceedings, if any, as a result thereof; or

(c) Initiate any of the actions specified in subsection (2) of this section.

(2) The administrator may institute any or all of the following actions in the Chancery Court of the First Judicial District of Hinds County, Mississippi, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

(a) An action for a declaratory judgment;

(b) An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or any rule or order of the administrator;

(c) An action for disgorgement; or

(d) An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

SOURCES: Laws, 1993, ch. 319, § 11, eff from and after July 1, 1993.

Cross References — Burden of proof as to exemptions, see § 75-89-41.

RESEARCH REFERENCES

Am Jur. 8 Am. Jur. Pl & Pr Forms, Declaratory Judgments, Form 3.8 (Complaint, petition, or declaration—To determine rights and obligations of parties under commodity contract).

§ 75-89-23. Judicial measures to prevent, enjoin, and prosecute violations of Mississippi or other state's Commodity Act; special remedies; administrator need not post bond.

(1)(a) Upon a proper showing by the administrator that a person has violated, or is about to violate, any provision of this chapter or any rule or order of the administrator, the court may grant appropriate legal or equitable remedies.

(b) Upon a showing of violation of this chapter or a rule or order of the administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

(i) Disgorgement;

(ii) Declaratory judgment;

(iii) Restitution to investors wishing restitution; and

(iv) Appointment of a receiver or conservator for the defendant or the defendant's assets.

(c) Appropriate remedies when the defendant is shown only about to violate this chapter or a rule or order of the administrator shall be limited to:

(i) A temporary restraining order;

(ii) A temporary or permanent injunction;

(iii) A writ of prohibition or mandamus; or

(iv) An order appointing a receiver or conservator for the defendant or the defendant's assets.

(d) Upon a proper showing by the administrator or commodity agency of another state that a person, other than a government or governmental agency or instrumentality, has violated, or is about to violate, any provision of the commodity code of that state or any rule or order of the administrator or commodity agency of that state, the Chancery Court of the First Judicial

District of Hinds County, Mississippi, may grant appropriate legal and equitable remedies.

(e) Upon showing of a violation of the commodity act of another state or a rule or order of the administrator or commodity agency of another state, the court, in addition to traditional legal or equitable remedies including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions and writs of prohibition or mandamus, may grant the following special remedies:

(i) Disgorgement; and

(ii) Appointment of a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

(f) Appropriate remedies when the defendant is shown only about to violate the commodity act of another state or a rule or order of the administrator or commodity agency of another state shall be limited to:

(i) A temporary restraining order;

(ii) A temporary or permanent injunction;

(iii) A writ of prohibition or mandamus; and

(iv) An order appointing a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

(2) The court shall not require the administrator to post a bond in any official action under this chapter.

SOURCES: Laws, 1993, ch. 319, § 12, eff from and after July 1, 1993.

Cross References — Burden of proof as to exemptions, see § 75-89-41.

RESEARCH REFERENCES

Am Jur. 8 Am. Jur. Pl & Pr Forms (Rev), Declaratory Judgments, Form 3.8 (Complaint, petition, or declaration—To determine rights and obligations of parties under commodity contract).

§ 75-89-25. Penalties; period of limitations; institution of criminal proceedings.

(1) Any person who willfully violates:

(a) Any provision of this chapter; or

(b) Any rule or order of the administrator under this chapter shall, upon conviction, be fined not more than Twenty-five Thousand Dollars ($25,000.00) or imprisoned not more than five (5) years, or both, for each violation.

(2) Any person convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the person proves he had no knowledge of the rule or order.

(3) No indictment or information may be returned under this chapter more than five (5) years after the alleged violation.

(4) The administrator may refer such evidence as is available concerning violations of this chapter or any rule or order of the administrator to the Attorney General or to the proper district attorney, who may, with or without such a referral from the administrator, institute the appropriate criminal proceedings under this chapter.

SOURCES: Laws, 1993, ch. 319, § 13, eff from and after July 1, 1993.

Cross References — Burden of proof as to exemptions, see § 75-89-41.

§ 75-89-27. Secretary of State to administer chapter; insider information; public and privileged information; subpoena of evidence.

(1) This chapter shall be administered by the Secretary of State of Mississippi.

(2) Neither the administrator nor any employees of the administrator shall use any information which is filed with or obtained by the administrator which is not public information for personal gain or benefit, nor shall the administrator or any employees of the administrator conduct any commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the commodity markets to assimilate such information.

(3)(a) Except as provided in paragraph (b) of this subsection (3), all information collected, assembled or maintained by the administrator is public information and is available for the examination of the public as provided by the Mississippi Public Records Act of 1983.

(b) The following are exceptions to paragraph (a) of this subsection (3) which are deemed to be confidential:

(i) Information obtained in private investigations pursuant to Section 75-89-19;

(ii) Information made confidential by the provisions of the Mississippi Public Records Act of 1983, and any statutory exceptions thereto;

(iii) Information obtained from federal agencies which may not be disclosed under federal law.

(c) The administrator in his discretion may disclose any information made confidential under paragraph (3)(b) of this section to persons identified in subsection (1) of Section 75-89-29.

(d) No provision of this chapter either creates or derogates any privilege which exists at common law, by statute or otherwise when any documentary or other evidence is sought under subpoena directed to the administrator or any employee of the administrator.

SOURCES: Laws, 1993, ch. 319, § 14, eff from and after July 1, 1993.

Cross References — Mississippi Public Records Act of 1983, see § 25-61-1 et seq.

§ 75-89-29. Cooperation with like agencies in other jurisdictions.

(1) To encourage uniform application and interpretation of this chapter and commodities regulation and enforcement in general, the administrator and the employees of the administrator may cooperate, including bearing the expense of the cooperation, with the commodities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies administering this chapter, the Commodity Futures Trading Commission, the Securities and Exchange Commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities officials or agencies and any governmental law enforcement agency.

(2) The cooperation authorized by subsection (1) shall include, but need not be limited to, the following:

(a) Making joint examinations or investigations;

(b) Holding joint administrative hearings;

(c) Filing and prosecuting joint litigation;

(d) Sharing and exchanging personnel;

(e) Sharing and exchanging information and documents;

(f) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes and releases; and

(g) Issuing and enforcing subpoenas at the request of the commodity agency in another jurisdiction, the securities agency of another jurisdiction, the Commodity Futures Trading Commission or the Securities and Exchange Commission, if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

SOURCES: Laws, 1993, ch. 319, § 15, eff from and after July 1, 1993.

Cross References — Disclosure of otherwise confidential information permitted to person identified in this section, see § 75-89-27.

Federal Aspects — Commodity Exchange Act, see 7 USCS § 1 et seq.

Commodity Futures Trading Commission, see 7 USCS § 4a.

Securities Exchange Act of 1934, see 15 USCS § 78a et seq.

Securities and Exchange Commission, see 15 USCS § 78d.

§ 75-89-31. Administrator may make, amend and rescind rules, forms and orders; publication of same; exemption from liability therefor.

(1) In addition to specific authority granted elsewhere in this chapter, the administrator may make, amend and rescind rules, forms and orders as are necessary to carry out the provisions of this chapter. Such rules or forms shall include, but need not be limited to rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules or forms, the administrator

may classify commodities and commodity contracts, persons and matters within the administrator's jurisdiction.

(2) Unless specifically provided in this chapter, no rule, form or order may be adopted, amended or rescinded unless the administrator finds that the action is:

(a) Necessary or appropriate in the public interest or for the protection of investors; and

(b) Consistent with the purposes fairly intended by the policy and provisions of this chapter.

(3) All rules and forms of the administrator shall be published.

(4) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order or form adopted by the administrator, notwithstanding that the rule, order or form may later be amended, or rescinded or be determined by judicial or other authority to be invalid for any reason.

SOURCES: Laws, 1993, ch. 319, § 16, eff from and after July 1, 1993.

Cross References — Authority of administrator to issue rules, regulations and orders prescribing terms and conditions of all transactions and contracts covered by this chapter, see § 75-89-9.

§ 75-89-33. Conduct violative of chapter or rule deemed appointment of administrator to accept service of process.

When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order of the administrator, the engaging in the conduct shall constitute the appointment of the administrator as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor or personal representative, which grows out of that conduct and which is brought under this chapter or any rule or order of the administrator with the same force and validity as if served personally.

SOURCES: Laws, 1993, ch. 319, § 17, eff from and after July 1, 1993.

§ 75-89-35. Applicability of certain provisions when purchase, sale, or offer to buy or sell is made in state; what constitutes purchase, sale, or offer to buy or sell in state.

(1) Sections 75-89-5, 75-89-11, and 75-89-13 apply to persons who sell or offer to sell when:

(a) An offer to sell is made in this state; or

(b) An offer to buy is made and accepted in this state.

(2) Sections 75-89-5, 75-89-11, and 75-89-13 apply to persons who buy or offer to buy when:

(a) An offer to buy is made in this state; or

(b) An offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer:

(a) Originates from this state; or

(b) Is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.

(4) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance:

(a) Is communicated to the offeror in this state; and

(b) Has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(a) The publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds (⅔) of its circulation outside this state during the past twelve (12) months; or

(b) A radio or television program originating outside this state is received in this state.

SOURCES: Laws, 1993, ch. 319, § 18, eff from and after July 1, 1993.

§ 75-89-37. Procedure for administrative proceedings; notice and hearing.

(1) The administrator shall commence an administrative proceeding under this chapter by entering either a notice of intent to take administrative action or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing and need not be supported by findings of fact or conclusions of law, but must be in writing.

(2) Upon entry of a notice of intent or summary order, the administrator shall promptly notify the party against whom the notice of intent or summary order is entered that the notice of intent or summary order has been entered and the reasons therefor. The administrator shall also inform the party against whom the notice or summary order is entered that a written request for a hearing on the matters set forth in the notice of intent or summary order must be filed with the administrator within thirty (30) calendar days from receipt of a certified copy of the notice of intent or summary order.

(3) If the proceeding is pursuant to a summary order, the administrator, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the administrator's own motion.

(4) If no hearing is requested within the requisite period of time and none is ordered by the administrator, the notice of intent or summary order will become final upon entry of an appropriate order.

(5) If a hearing is requested or ordered, the administrator shall give notice to the party against whom the notice or summary order has been entered of the date, time and place of the hearing. The administrator shall promulgate rules governing the procedure for conducting the hearing and for entering the appropriate final order thereafter. However, no final order or other order after the hearing may be entered without:

(a) Appropriate notice to the party or parties against whom the notice of intent or summary order has been entered;

(b) Opportunity for hearing by the party or parties against whom the notice of intent or summary order has been entered; and

(c) Entry of written findings of fact and conclusions of law.

SOURCES: Laws, 1993, ch. 319, § 19, eff from and after July 1, 1993.

Cross References — Judicial review of orders which become final under subsection (4) of this section, see § 75-89-39.

Burden of proof as to exemptions, see § 75-89-41.

§ 75-89-39. Judicial review of final orders.

(1) Any person aggrieved by a final order of the administrator may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in court within sixty (60) days after the entry of the order a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition for review shall be served upon the administrator.

(2) Upon the filing of a petition for review, except where the taking of additional evidence is ordered by court pursuant to subsection (5) or (6) of this section, the court shall have exclusive jurisdiction of the matter, and the administrator may not modify or set aside the order in whole or in part.

(3) The filing of a petition for review under subsection (1) of this section does not, unless specifically ordered by the court, operate as a stay of the administrator's order, and the administrator may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

(4) Upon receipt of the petition for review, the administrator shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which it was based. If the order became final under subsection (4) of Section 75-89-37, the administrator shall file in court an affidavit certifying that no hearing has been held and that the order became final pursuant to subsection (4) of Section 75-89-37.

(5) If either the aggrieved party or the administrator applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court, that there were reasonable grounds for failure to adduce the evidence in the hearing before the administrator or other good cause, the court may order

the additional evidence to be taken by the administrator under such conditions as the court considers proper.

(6) If new evidence is ordered taken by the court, the administrator may modify the findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.

(7) The court shall review the petition based upon the original record before the administrator plus any additional evidence ordered to be taken pursuant to subsections (5) and (6) of this section. The findings of the administrator as to the facts, if supported by competent, material and substantive evidence, are conclusive. Based upon this review, the court may affirm, modify, enforce or set aside the order in whole or in part.

SOURCES: Laws, 1993, ch. 319, § 20, eff from and after July 1, 1993.

Cross References — Burden of proof as to exemptions, see § 75-89-41.

§ 75-89-41. Burden of proof as to exemptions.

It shall not be necessary to negate any of the exemptions of this chapter in any complaint, information or indictment, or in any writ or proceeding brought under this chapter. The burden of proof of any such exemption shall be upon the party claiming the same.

SOURCES: Laws, 1993, ch. 319, § 21, eff from and after July 1, 1993.

§ 75-89-43. Failure to make timely delivery not a violation when caused by factors beyond control of seller, seller's agents, etc.

It shall be a defense in any complaint, information, indictment, any writ or proceeding brought under this chapter alleging a violation of Section 75-89-5 based solely on the failure in an individual case to make physical delivery within the applicable time period under paragraph (e) of Section 75-89-3 or paragraph (1)(b) of Section 75-89-9 that:

(a) Failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates, subsidiaries or successors; and

(b) Physical delivery was completed within a reasonable time under the applicable circumstances.

SOURCES: Laws, 1993, ch. 319, § 22, eff from and after July 1, 1993.

§ 75-89-45. Interpretative opinions; no-action determinations.

The administrator may honor requests from interested persons for interpretative opinions or may issue determinations that no enforcement proceedings will be instituted against certain specified persons for engaging in certain specified activities when the determination is consistent with the purposes fairly intended by the policy and provisions of this chapter. The administrator may charge a fee for interpretative opinions and for no-action determinations.

SOURCES: Laws, 1993, ch. 319, § 23, eff from and after July 1, 1993.

CHAPTER 91

Truth in Music Advertising

SEC.
75-91-1. Short title.
75-91-3. Definitions.
75-91-5. Advertising or conducting live musical performance or production through use of false or misleading affiliation or connection between performing group and recording group prohibited; exceptions.
75-91-7. Injunctive relief for violation of chapter.
75-91-9. Penalties.

§ 75-91-1. Short title.

This chapter shall be known and may be cited as the "Truth in Music Advertising Act."

SOURCES: Laws, 2008, ch. 421, § 1, eff from and after July 1, 2008.

§ 75-91-3. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(a) "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(b) "Recording group" means a vocal or instrumental group at least one (1) of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(c) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken or other sounds regardless of the nature of the material object, such as a disk, tape or other phono-record, in which the sounds are embodied.

SOURCES: Laws, 2008, ch. 421, § 2, eff from and after July 1, 2008.

§ 75-91-5. Advertising or conducting live musical performance or production through use of false or misleading affiliation or connection between performing group and recording group prohibited; exceptions.

It shall be unlawful for any person to advertise or conduct a live musical performance or production in this state through the use of a false, deceptive or misleading affiliation, connection or association between a performing group and a recording group. This section does not apply if any of the following apply:

(a) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States Patent and Trademark Office.

(b) At least one (1) member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(c) The live musical performance or production is identified in all advertising and promotion as a salute or tribute and the name of the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public.

(d) The advertising does not relate to a live musical performance or production taking place in this state.

(e) The performance or production is expressly authorized by the recording group.

SOURCES: Laws, 2008, ch. 421, § 3, eff from and after July 1, 2008.

§ 75-91-7. Injunctive relief for violation of chapter.

(1) Whenever the Attorney General or a district attorney has reason to believe that any person is advertising or conducting or is about to advertise or conduct a live musical performance or production in violation of Section 75-91-5 and that proceedings would be in the public interest, the Attorney General or district attorney may bring an action in the name of the state against the person to restrain by temporary or permanent injunction that practice.

(2) Whenever any court issues a permanent injunction to restrain and prevent violations of this chapter as authorized in subsection (1) of this section, the court may, in its discretion, direct that the defendant restore to any person in interest any monies or property, real or personal, which may have been acquired by means of any violation of this chapter, under terms and conditions to be established by the court.

SOURCES: Laws, 2008, ch. 421, § 4, eff from and after July 1, 2008.

§ 75-91-9. Penalties.

Any person who violates Section 75-91-5 is liable for a civil penalty of not less than Five Thousand Dollars ($5,000.00) nor more than Fifteen Thousand Dollars ($15,000.00) per violation, which civil penalty shall be in addition to any other relief which may be granted under Section 75-91-7. Each performance or production declared unlawful by Section 75-91-5 shall constitute a separate violation.

SOURCES: Laws, 2008, ch. 421, § 5, eff from and after July 1, 2008.

CHAPTER 93

Fictitious Business Name Registration Act

Sec.

75-93-1. Short title.
75-93-3. Purpose.
75-93-5. Definitions.
75-93-7. Registration.
75-93-9. Amendments to registration.
75-93-11. Term and renewal.
75-93-13. Effect of registration.
75-93-15. Withdrawal of registration.
75-93-17. Cancellation of registration.
75-93-19. Change of ownership.
75-93-21. Forms and fees.
75-93-23. Legal designation of entity.
75-93-25. Limitations on adoption of certain fictitious business names.
75-93-27. Public examination of records.
75-93-29. Powers of Secretary of State.
75-93-31. Penalty for fraudulent filings.

§ 75-93-1. Short title.

This chapter may be cited as the "Fictitious Business Name Registration Act."

SOURCES: Laws, 2010, ch. 401, § 1, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-1 for Code section number 25-93-1, which was the Code section number assigned to this section by Section 1 of Chapter 401, Laws of 2010.

§ 75-93-3. Purpose.

The purpose of this chapter is to establish a centralized, statewide system of voluntary registration of fictitious business names being used in this state in order to provide the public with the legal names of persons or entities doing business under a fictitious name.

SOURCES: Laws, 2010, ch. 401, § 2, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-3 for Code section number 25-93-3, which was the Code section number assigned to this section by Section 2 of Chapter 401, Laws of 2010.

§ 75-93-5. Definitions.

As used in this chapter:

(a) "Business" means any commercial or professional activity.

(b) "Fictitious business name" means any name under which an entity transacts business in this state, other than (i) the entity's legal name, or (ii) a fictitious name adopted by a foreign entity under Title 79, Mississippi Code of 1972, because its legal name is unavailable.

(c) "Entity" means any corporation; limited liability company; partnership; limited partnership; limited liability partnership; sole proprietorship; firm; enterprise; franchise; association; organization; holding company; self-employed individual; joint-stock company; receivership; trust; other legal entity or undertaking organized for economic gain; nonprofit corporation; association or organization receiving public funds; or other such entity.

SOURCES: Laws, 2010, ch. 401, § 3, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-5 for Code section number 25-93-5, which was the Code section number assigned to this section by Section 3 of Chapter 401, Laws of 2010.

§ 75-93-7. Registration.

(1) An entity may apply to register a fictitious business name by filing with the Secretary of State the following information:

(a) The fictitious business name to be registered;

(b) The applicant's legal name and mailing address;

(c) Every street address or physical location where the entity uses or will be using the fictitious business name to transact business;

(d) If the applicant is a domestic corporation or limited liability company, its Mississippi business identification number;

(e) If the applicant is a foreign corporation or limited liability company, the state or nation of its organization and a copy of its certificate of authority to transact business in Mississippi;

(f) A statement that the applicant is familiar with the provisions of this chapter and understands that filing under this section does not create any exclusive rights in or to the fictitious business name; and

(g) Any other information the Secretary of State may reasonably require by rule, including, without limitation, the applicant's electronic mailing address, the address of the entity's official Web site, if applicable, and the general nature of the business conducted by the applicant.

(2) The applicant shall sign and verify the application.

(3) Upon compliance by the applicant with the requirements of this section, the Secretary of State shall return to the applicant a stamped copy of the approved registration application.

(4) The Secretary of State shall not refuse registration of a fictitious business name on the grounds that the name is indistinguishable from a previously registered fictitious business name, registered trademark, or legal name of an entity required by law to register with the Secretary of State.

(5) Only one (1) fictitious business name may be registered per application submitted under the provisions of this section.

SOURCES: Laws, 2010, ch. 401, § 4, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-7 for Code section number 25-93-7, which was the Code section number assigned to this section by Section 4 of Chapter 401, Laws of 2010.

§ 75-93-9. Amendments to registration.

The registrant of a fictitious business name shall, within thirty (30) days of a material change in any of the information listed in Section 75-93-7(1), file with the Secretary of State an amendment of fictitious business name registration. The amendment shall set forth all information that would be required in an original application for registration of a fictitious business name, and the amendment shall be executed in the same manner as an original application.

SOURCES: Laws, 2010, ch. 401, § 5, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-9 for Code section number 25-93-9, which was the Code section number assigned to this section by Section 5 of Chapter 401, Laws of 2010. In addition, an error in a statutory reference in the section was corrected by substituting "Section 75-93-7(1)" for Section 25-93-7(1)."

§ 75-93-11. Term and renewal.

(1) The registration period for a fictitious business name registered under this chapter shall be five (5) years; registration shall expire on December 31 of the year in which the fifth anniversary of registration occurs.

(2) Renewal of fictitious business name registrations:

(a) Renewal of a fictitious business name registration may be made on or between January 1 and December 31 of the expiration year. Upon timely filing of a renewal statement, the effectiveness of the registration shall continue for five (5) years as provided in this section.

(b) If the registration is not timely renewed on or before December 31 of the year of expiration, the registration shall expire. The Secretary of State shall remove any expired or canceled registration from its records and may purge such registrations.

SOURCES: Laws, 2010, ch. 401, § 6, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-11 for Code section number 25-93-11, which was the Code section number assigned to this section by Section 6 of Chapter 401, Laws of 2010.

§ 75-93-13. Effect of registration.

Notwithstanding the provisions of any other law, registration of a fictitious business name under this chapter is for public notice only and gives rise to no presumption of the registrant's exclusive rights to own or use the fictitious business name registered, nor does it affect trademark, service mark, trade name, or other name rights previously acquired by others in the same or similar name. Registration under this chapter does not preserve a fictitious business name against future use or registration by others. The issuance of a registration under this chapter shall not constitute due organization or authority to transact business in this state.

SOURCES: Laws, 2010, ch. 401, § 7, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-13 for Code section number 25-93-13, which was the Code section number assigned to this section by Section 7 of Chapter 401, Laws of 2010.

§ 75-93-15. Withdrawal of registration.

The registrant of a fictitious business name may withdraw its registration by delivering to the Secretary of State a statement containing the following:

(a) The legal name of the entity utilizing the fictitious business name;

(b) The fictitious business name with respect to which the statement of withdrawal relates;

(c) That the entity will no longer transact business in this state under the fictitious business name;

(d) An acknowledgement that the applicant understands the fictitious business name registration will no longer be effective upon the filing of the statement of withdrawal; and

(e) The signature of the withdrawing registrant.

SOURCES: Laws, 2010, ch. 401, § 8, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-15 for Code section number 25-93-15, which was the Code section number assigned to this section by Section 8 of Chapter 401, Laws of 2010.

§ 75-93-17. Cancellation of registration.

The Secretary of State shall cancel a fictitious business name registration if:

(a) The Secretary of State receives a voluntary withdrawal of registration from the registrant or the assignee of record;

(b) The registration is not renewed in accordance with this chapter;

(c) A court of competent jurisdiction orders the cancellation on any grounds; or

(d) The registration was obtained fraudulently by containing false or misleading information.

SOURCES: Laws, 2010, ch. 401, § 9, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-17 for Code section number 25-93-17, which was the Code section number assigned to this section by Section 9 of Chapter 401, Laws of 2010.

§ 75-93-19. Change of ownership.

Any fictitious business name registered under this chapter may be assigned by filing a duly executed written instrument with the Secretary of State.

SOURCES: Laws, 2010, ch. 401, § 10, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-19 for Code section number 25-93-19, which was the Code section number assigned to this section by Section 10 of Chapter 401, Laws of 2010.

§ 75-93-21. Forms and fees.

(1) All filings required under this chapter shall be made on forms prescribed by the Secretary of State.

(2) Subject to the provisions of subsection (3), the Secretary of State shall charge and collect nonrefundable processing fees as follows:

(a) For registration or renewal of a fictitious business name, Twenty-five Dollars ($25.00).

(b) For withdrawal, cancellation, amendment, or assignment of a fictitious business name, Twenty-five Dollars ($25.00).

(c) For furnishing a certified copy of a fictitious business name document, Ten Dollars ($10.00).

(3) Entities required by law to file annual reports with the Secretary of State shall not be charged a separate fee for registration or renewal of a fictitious business name, provided that the application for registration or renewal is filed along with the entity's annual report.

(4) The Secretary of State shall prescribe by rule the means of electronic filing of documents required under this chapter.

SOURCES: Laws, 2010, ch. 401, § 11, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-21 for Code section number 25-93-21, which was the Code section number assigned to this section by Section 11 of Chapter 401, Laws of 2010.

§ 75-93-23. Legal designation of entity.

Notwithstanding any other provision of law to the contrary, a fictitious business name registered as provided in this chapter is not required to contain within that name a designation reflecting the applicant's type of legal entity, including the terms "corporation," "limited liability company," "limited liability partnership," "limited partnership," or any abbreviations or derivatives thereof.

SOURCES: Laws, 2010, ch. 401, § 12, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-23 for Code section number 25-93-23, which was the Code section number assigned to this section by Section 12 of Chapter 401, Laws of 2010.

§ 75-93-25. Limitations on adoption of certain fictitious business names.

(1) The Secretary of State shall refuse registration of a fictitious business name, which, in the Secretary of State's sole discretion, is potentially misleading, or which includes any of the following terms:

(a) "Corporation," "Corp.," "Incorporated," or "Inc.," unless the applicant is a corporation organized or qualified to do business pursuant to the laws of this state;

(b) "Limited Liability Company," "Limited Company" or the abbreviation "L.L.C.," "L.C.," "LLC," or "LC," unless the applicant is a limited liability company organized or registered to do business pursuant to the laws of this state;

(c) "Business Trust" or the abbreviation "B.T." or "BT," unless the applicant is a business trust organized or registered to do business pursuant to the laws of this state;

(d) "Professional Corporation" or the abbreviation "Prof. Corp.," "P.C.," or "PC" or the word "Chartered" or the abbreviation "Chtd.," unless the applicant is a professional corporation organized to do business pursuant to the laws of this state;

(e) "Professional Association," "Professional Organization," or the abbreviation "Prof. Ass'n" or "Prof. Org.," unless the applicant is a professional association organized to do business pursuant to the laws of this state;

(f) "Limited" or the abbreviation "Ltd.," unless the applicant is a corporation, limited liability company, registered limited liability partnership, limited partnership, or professional corporation organized, qualified, or registered to do business pursuant to the laws of this state;

(g) Words not permitted to be used in any business name without governmental consent, unless the applicant provides to the Secretary of State written evidence of such consent.

(2) Notwithstanding the other provisions of this section, the Secretary of State may allow registration of a fictitious business name which contains a prohibited term if, in the Secretary of State's sole discretion, the term is not misleading.

SOURCES: Laws, 2010, ch. 401, § 13, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-25 for Code section number 25-93-25, which was the Code section number assigned to this section by Section 13 of Chapter 401, Laws of 2010.

Cross References — Mississippi Business Corporation Act, see §§ 79-4-1.101 et seq.

Mississippi Professional Corporation Act, see §§ 79-10-1 et seq.

Mississippi Limited Liability Company Act, see §§ 79-29-101 et seq.

§ 75-93-27. Public examination of records.

The Secretary of State shall keep for public examination a record of all fictitious business names registered or renewed under the provisions of this chapter.

SOURCES: Laws, 2010, ch. 401, § 14, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-27 for Code section number 25-93-27, which was the Code section number assigned to this section by Section 14 of Chapter 401, Laws of 2010.

§ 75-93-29. Powers of Secretary of State.

The Secretary of State is granted the power reasonably necessary to enable it to administer this chapter efficiently, to perform the duties herein imposed upon it, and to adopt reasonable rules necessary to carry out its duties and functions under this chapter.

SOURCES: Laws, 2010, ch. 401, § 15, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-29 for Code section number 25-93-29, which was the Code section number assigned to this section by Section 15 of Chapter 401, Laws of 2010.

§ 75-93-31. Penalty for fraudulent filings.

Any person who shall knowingly and willfully procure the registration of a fictitious business name or apply for registration of a fictitious business name under the provisions of this chapter by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars ($500.00).

SOURCES: Laws, 2010, ch. 401, § 16, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-31 for Code section number 25-93-31, which was the Code section number assigned to this section by Section 16 of Chapter 401, Laws of 2010.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 95

Business of Purchasing Precious Items for Resale

Sec.
75-95-1. Definitions; applicability.
75-95-3. Privilege license required.
75-95-5. Information to be maintained by dealer for period of time after purchase of precious item; identification of person from whom dealer purchases precious item; list of items purchased to be delivered to law enforcement agency; contents of list.
75-95-7. Custody of precious item; forms of payment to seller; purchase of item from person under 18 years of age.
75-95-9. Display of provisions of this chapter on business premises.
75-95-11. Penalties for violation of chapter.

§ 75-95-1. Definitions; applicability.

(1) As used in this chapter, the following words and phrases have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Dealer" means any person, corporation or partnership that engages in the business of purchasing precious items for the purpose of reselling such items in any form. The term "dealer" does not include a manufacturer, retail merchant, pawnbroker licensed under the Mississippi Pawnshop Act (Article 7, Chapter 67, Title 75, Mississippi Code of 1972) or person in the wholesale business, nor does it include any person who purchases precious items at a social gathering in a private residence.

(b) "Local law enforcement agency" means the chief of police for businesses located within the jurisdiction of a municipality and the county sheriff for businesses located outside the jurisdiction of a municipality.

(c) "Permanent place of business" means a fixed premises either owned by the dealer or leased by the dealer for at least one (1) year.

(d) "Precious item" means any of the following:

(i) An article made, in whole or in part, of gold, silver or platinum.

(ii) Precious or semiprecious stones or pearls, whether mounted or unmounted.

(e) "Purchase" means the acquisition of a precious item or items for a consideration of cash, goods or another precious item.

(2) This chapter shall not apply to any person who purchases precious items from a retail merchant, pawnbroker licensed under the Mississippi Pawnshop Act, manufacturer or wholesale dealer, nor does it apply to any person who purchases precious items at a social gathering in a private residence.

(3) For purposes of this section, the term "private residence" means a separate dwelling or a separate apartment in a multiple dwelling, which is occupied by members of a single-family unit.

SOURCES: Laws, 2011, ch. 414, § 1, eff from and after July 1, 2011.

Cross References — Mississippi Pawnshop Act, see §§ 75-67-301 et seq.

§ 75-95-3. Privilege license required.

(1) A dealer desiring to engage in the business of purchasing precious items for the purpose of reselling those items must purchase a privilege license under Section 27-17-9 which authorizes him or her to engage in that business. A dealer may not operate in the State of Mississippi unless he or she has a current privilege license to engage in the business of purchasing precious items for the purpose of reselling those items.

(2) A dealer may operate only from the permanent place of business listed on the privilege license. The dealer must forward a copy of each privilege license to the local law enforcement agency within five (5) days of receipt of the license.

SOURCES: Laws, 2011, ch. 414, § 2, eff from and after July 1, 2011.

§ 75-95-5. Information to be maintained by dealer for period of time after purchase of precious item; identification of person from whom dealer purchases precious item; list of items purchased to be delivered to law enforcement agency; contents of list.

(1) Each dealer shall keep the following information for six (6) months from the date of purchase of a precious item:

(a) The name, current address, date of birth and signature of the person from whom the dealer purchased the item.

(b) A description of the person, including height, weight, race, complexion and hair color.

(c) A copy and the serial number of a valid identification card number, as required under subsection (2).

(d) A list describing the items purchased from that person.

Upon the request of a local law enforcement agency, the dealer must make available any of the information required under this subsection.

(2) Before making a purchase, a dealer shall require the person from whom he or she is purchasing the precious item to identify himself or herself with a valid driver's license, nondriver's identification card, armed services identification card or other valid photo identification sufficient to obtain the information required under subsection (1). The photo identification must contain a traceable serial number, which must be recorded by the dealer. The local law enforcement agency shall make available to each dealer a list of the forms of photo identification that are acceptable under this chapter.

(3) Each dealer, at least once each week in which he or she makes a purchase, shall make out and deliver to the local law enforcement agency a true, complete and legible list of all items purchased during the period since the last report. If the local law enforcement agency has issued forms for the making of the reports, the dealer must use those forms to meet the requirements of this subsection. The list of items must include the following:

(a) The brand name and serial number, if any, of the item or items purchased.

(b) An accurate description of each item sufficient to enable the law enforcement agency to identify the item.

(c) The date and time when the item was received.

(d) The amount paid for each item.

(e) All information required under subsection (1) of this section.

SOURCES: Laws, 2011, ch. 414, § 3, eff from and after July 1, 2011.

§ 75-95-7. Custody of precious item; forms of payment to seller; purchase of item from person under 18 years of age.

(1) Any item purchased must be held in the dealer's custody in the same shape and form for which it was receipted for fifteen (15) business days after delivering the list of items required under Section 75-95-5 to the local law enforcement agency.

(2) A dealer may make payment to a seller only by check made payable to a named actual intended seller.

(3) It is presumptive evidence of intent to violate this chapter if the items purchased are not listed or fail to agree with the description contained in the required list.

(4) On notification by a law enforcement agency or district attorney's office that the items purchased are the fruits of a crime, a dealer may not dispose of those items.

(5) A dealer may not purchase items from any person under eighteen (18) years of age unless the person is accompanied by a parent or guardian who submits the identification required under Section 75-95-5.

SOURCES: Laws, 2011, ch. 414, § 4, eff from and after July 1, 2011.

§ 75-95-9. Display of provisions of this chapter on business premises.

Each dealer must display prominently a copy of this chapter in a conspicuous place on the premises of the business.

SOURCES: Laws, 2011, ch. 414, § 5, eff from and after July 1, 2011.

§ 75-95-11. Penalties for violation of chapter.

A violation of this chapter is a misdemeanor punishable by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both fine and imprisonment.

SOURCES: Laws, 2011, ch. 414, § 6, eff from and after July 1, 2011.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

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Electronic agent.
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Entity.
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Gaming.
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